

MICHELLE DAVID

633 S. Plymouth Ct., Apt. 407, Chicago, IL 60605 | madavid@uchicago.edu | (847) 528-4100

June 14, 2023

The Honorable Jamar Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman U.S Courthouse
600 Granby St.
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for a one-year term beginning in 2024. Because clerkships are one of the best ways to continue developing my analytical and writing skills while affording me the opportunity to learn from a wide range of attorneys handling fast-paced issues, I would be grateful to begin my career as a clerk. More than that, I also care deeply about community-building and mentorship, so I would look forward to working with a close-knit team. After clerking, I will pursue a public interest career in the environmental justice space on behalf of low-income communities and communities of color.

I am confident that my writing and research abilities have prepared me to succeed as a clerk. Since beginning law school, for example, I drafted a 121-page initial brief with the Abrams Environmental Law Clinic to advocate for affordable and clean energy for low-income, BIPOC communities. More recently, I authored a forthcoming article in the *University of Chicago Law Review* on the toxic legacies of uranium mines and co-authored a separate forthcoming article in the *CUNY Law Review* on Asian American voting rights. Each project involved an area of law that was new but rewarding to learn, and these experiences have instilled in me a finer attention to precise language and style.

Additionally, I bring strong communication and collaboration skills. As the team captain of my undergraduate Model UN team, I received multiple “Best Delegate” awards for my advocacy and collaboration. I further developed those skills in a full-time role as a Pricing & Legal Project Management Analyst, where I learned how to work closely with partners on matter pricing strategy. As a community leader with Asian Americans Advancing Justice | Chicago, I mentored and led our volunteer team—including organizing planning and lobby meetings—to help pass a bill requiring Illinois public schools to integrate Asian American history into their curricula. Lastly, this past year, I collaborated with my teams in the Environmental Law Society and Asian Pacific American Law Students Association to invite speakers to discuss a variety of justice-focused topics, including on voting rights, affirmative action, environmental justice, and Indigenous-led litigation.

Beyond my background, I am a fast learner with a strong work ethic and know how to ask questions when necessary, and I would be grateful for the opportunity to work with you. I have included my resume, writing sample, and transcript for your review. Thank you for your time and consideration.

Sincerely,



Michelle David

MICHELLE DAVID

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EDUCATION

University of Chicago Law School

Chicago, IL

Juris Doctor

Expected June 2024

- JOURNAL: Managing Editor, *University of Chicago Law Review*
 COMMENT: *Clean Up Your Act: The U.S. Government's CERCLA Liability for Uranium Mines on the Navajo Nation* (forthcoming, *University of Chicago Law Review*)
 ACTIVITIES: President, Environmental Law Society; Programming Director, APALSA

Northwestern University

Evanston, IL

Bachelor of Arts, cum laude, in Political Science, with minors in Environmental Policy & Economics June 2019

- THESIS: *Empowerment & Silence at COP 21: An Ethnographic Analysis of Indigenous Activism*
 AWARDS: McGovern Prize for Academic Excellence & Leadership, Environmental Policy Certificate of Honor (for environmental citizenship & service)
 HONOR SOCIETIES: Phi Beta Kappa, Pi Sigma Alpha (political science)
 ACTIVITIES: Chief of Staff, Model UN; President, Alpha Phi Omega (community service fraternity)

EXPERIENCE

Natural Resources Defense Council

Chicago, IL

Legal Intern, Litigation Team

Expected Aug. 2023–Dec. 2023

Arnold & Porter

Chicago, IL

Summer Associate

May 2023–July 2023

Federal Energy Regulatory Commission, Commissioner Allison Clements

Washington, D.C. (Remote)

Legal Intern

Jan. 2023–May 2023

- Researched environmental justice agency guidance, *Chevron*, and the APA for three gas pipeline orders
- Met with community-based groups, and provided feedback on panel questions for a justice-related event

University of Chicago Law School, Abrams Environmental Law Clinic

Chicago, IL

Clinic Intern, Michigan Energy Team

June 2022–May 2023

- Drafted the initial and reply briefs for energy justice clients in a rate case against an electric utility
- Collaborated with clients to draft testimony and discovery in an integrated resource planning case

Asian American Legal Defense and Education Fund

New York, NY (Remote)

Voting Rights Intern

Sept. 2022–Dec. 2022

- Conducted poll monitoring and exit polling during both the general and runoff elections in Georgia
- Drafted observation letters detailing violations of voting rights in counties with high AAPI populations
- Co-authored an article on threats to § 208 of the Voting Rights Act (forthcoming, *CUNY Law Review*)

Jenner & Block

Chicago, IL

Pricing & Legal Project Management Analyst

Sept. 2019–Sept. 2021

- Collaborated with partners to optimally price and approve alternative fee arrangements firm-wide
- Customized task-based budgets, fee analysis reports, and task list management tools for attorneys

Illinois Coalition for Immigrant and Refugee Rights

Chicago, IL

Policy Intern

Jan. 2019–June 2019

- Produced legal and policy research on immigration detention, enforcement, and state legislative efforts
- Created congressional fact sheets with immigration voting records, campaign finances, and census data

Chicago Council on Global Affairs

Chicago, IL

Global Water Intern, Global Food & Agriculture Program

Sept. 2018–Dec. 2018

- Drafted and edited sections of a law journal article on environmental migrants and refugee law
- Prepared memos on nutrient pollution, farmer-led irrigation, and water infrastructure for reports

INTERESTS

Community Organizing, Audiobook Memoirs, Sewing, Catan, NPR Podcasts

OFFICIAL ACADEMIC DOCUMENT



Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality
- P* High Pass
- P Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016



Name: Michelle Angela David
Student ID: 12334869

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

Northwestern University
Evanston, Illinois
Bachelor of Arts 2019

Beginning of Law School Record

Autumn 2021					
Course	Description	Attempted	Earned	Grade	
LAWS 30101	Elements of the Law Lior Strahilevitz	3	3	177	
LAWS 30211	Civil Procedure Emily Buss	4	4	176	
LAWS 30611	Torts Adam Chilton	4	4	177	
LAWS 30711	Legal Research and Writing Alison Gocke	1	1	177	

Winter 2022					
Course	Description	Attempted	Earned	Grade	
LAWS 30311	Criminal Law Jonathan Masur	4	4	175	
LAWS 30411	Property Aziz Huq	4	4	180	
LAWS 30511	Contracts Douglas Baird	4	4	176	
LAWS 30711	Legal Research and Writing Alison Gocke	1	1	177	

Spring 2022					
Course	Description	Attempted	Earned	Grade	
LAWS 30712	Legal Research, Writing, and Advocacy Alison Gocke	2	2	178	
LAWS 30713	Transactional Lawyering Joan Neal	3	3	180	
LAWS 43220	Critical Race Studies William Hubbard	3	3	177	
LAWS 44201	Legislation and Statutory Interpretation Ryan Doerfler	3	3	182	
LAWS 47201	Criminal Procedure I: The Investigative Process John Rappaport	3	3	177	

Summer 2022

Honors/Awards
The University of Chicago Law Review, Staff Member 2022-23

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 43228	Local Government Law Lee Fennell	3	3	177
LAWS 48215	Modern American Legal History William J Novak	3	0	
LAWS 90224	Abrams Environmental Law Clinic Mark Templeton	2	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 43282	Energy Law Joshua C. Macey	3	3	181
LAWS 46101	Administrative Law David A Strauss	3	3	178
LAWS 53462	Tragedies and Takings: Selected Topics in Land Use and Resource Allocation Lee Fennell	3	0	
LAWS 90224	Abrams Environmental Law Clinic Mark Templeton	2	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

Spring 2023

Course	Description	Attempted	Earned	Grade
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	178
LAWS 46001	Environmental Law: Air, Water, and Animals Hajin Kim	3	3	179
LAWS 53404	The Role and Practice of the State Attorney General Michael Scodro	3	0	
LAWS 90224	Abrams Environmental Law Clinic Mark Templeton	1	0	
LAWS 94110	The University of Chicago Law Review Meets Substantial Research Paper Requirement Designation: Anthony Casey	1	1	P

End of University of Chicago Law School

MICHELLE DAVID

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TRANSCRIPT NOTE

While I have attached the current version of my law school transcript, some grades are not yet available. For example, a few paper classes are pending grades: Modern American Legal History (Fall 2022), Tragedies and Takings (Winter 2023), and the Role and Practice of the State Attorney General (Spring 2023). For the Environmental Law Clinic, a grade will not be assigned until I have ended my time with the clinic (anticipated Spring 2024).

I am happy to follow up with an updated transcript as additional grades are published.

Hajin Kim
Assistant Professor of Law
University of Chicago Law School
1111 E 60th St.
Ph: 773.702.9494 | Email: hajin@uchicago.edu

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am eager to recommend Michelle David as a clerk in your chambers. Michelle is the most competent research assistant I have ever worked with, and a delightful person to boot. Michelle's grades, while above-median, wildly understate her excellence.

I first got to know Michelle last summer when she applied to be a part-time research assistant (RA) for me. Michelle helped on multiple aspects of a project considering the influence of Environmental, Social, and Governance (ESG) metrics. She was fantastic, and I wish I could have hired her full-time. She supervised an undergraduate RA for me, and every week prepared a clear, actionable memo detailing what the two had completed, open questions (with all necessary context), and proposed next steps. Michelle got up to speed with a new dataset, downloaded the information we needed, and prepared an extensive literature review on the use of various ESG metrics in prior research. Her summaries were concise and research memos so well-organized and helpful that I now use her literature review memo as a model for other research assistants. And she did all of this work part-time, in a fraction of the hours I am used to seeing other RAs require for comparable work.

After the summer, Michelle asked me to supervise her comment. Michelle wrote about CERCLA liability for uranium mines on the Navajo Nation. I have nothing but admiration for both Michelle's process and ultimate work product. On process, Michelle proactively created deadlines for each paper milestone (outline, rough draft, final) and used that to create a schedule of feedback check-ins with me that she scheduled at the start of the quarter. The final paper is excellent and far better than any other comment I have yet supervised. Michelle clearly lays out the problem of unremediated uranium mines, taking the reader through a brief tour of military history along the way. She explains why prior attempts to compensate victims have failed and then proposes using CERCLA liability for the U.S. government to partially address the issue. Her legal analysis is crisp and clear—not an easy feat when discussing the intricacies of CERCLA. Michelle quickly gets to the hardest issues and references a wide range of relevant circuit and district court decisions in making her case. I was not at all surprised when the Law Review selected Michelle's comment for publication.

I also taught Michelle this past quarter in Environmental Law. Michelle was always prepared for class, came to office hours with insightful questions on how the law might apply in practice, and did a great job on the exam—her issue spotter answer was among the top scores.

I would be remiss if I wrote a letter about Michelle and did not mention her sterling personal qualities, though I hardly know where to begin. Michelle is professional and poised—mature beyond her years and self-reflective. She takes feedback well and runs with it. She's a joy to chat with and kind. Most of all, she is deeply committed to helping others and giving back. And it is because of her deep commitments outside of the classroom (she has done several internships and co-authored several papers, been on Law Review, worked close to 10 hours a week on the Environmental Law Clinic, served as the Environmental Law Society President, and volunteers on campaigns) that I feel her grades do not accurately portray her potential. Michelle uses so much of her time in service of others. When she allows herself to put her attention on one area—as she would with a clerkship—she is a total rockstar.

Finally, Michelle's success is especially impressive given her background. Her family's financial circumstances were always precarious, but right before Michelle began college, her mother lost her job. In college, Michelle always worked at least two part-time jobs, more than 20 hours a week, to send money home. She moved in with her grandmother to save rent, and so had a 1.5-hour commute with a half-hour walk each way to get to campus. Yet she speaks glowingly about her time in college—she is particularly passionate about building up Northwestern's Model UN team.

I would be delighted to speak more at length about Michelle's candidacy if at all helpful.

Sincerely,

Hajin Kim
Assistant Professor of Law

Hajin Kim - hajin@uchicago.edu - 773-702-9494

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Recommendation Letter for Michelle David

Dear Judge Walker:

Michelle David is the top student out of more than 250 students I have worked with in my twelve years directing the Abrams Environmental Law Clinic and teaching at the University of Chicago Law School, and I give her my highest possible recommendation. In her first summer after law school, when she worked as a full-time law clinic intern, Michelle wrote approximately 100 pages—more than five-sixths—of an initial brief that we filed before the Michigan Public Service Commission (MPSC). Since then, she has ably contributed to her client's goals by performing multiple outstanding legal research projects, writing compelling direct and rebuttal testimony, and drafting critical portions of other briefs and filings. Michelle is exceptional—hard-working beyond belief, thoughtful and insightful, generous, warm-hearted, and deeply committed to her colleagues and clients. By example, she pushes me and her team to do our best work. I would hire her in a second if I could.

Throughout Michelle's time at the clinic, she has primarily worked on two cases before the MPSC: (1) a "rate case" in which a regulated electric utility—DTE Electric Co.—requested the Commission's permission to increase rates on customers, and (2) an "integrated resources plan" case in which the same utility submitted a long-term estimate of customer demands for electricity and a plan for the supply of generation resources the company would use to meet that demand. Through those cases, Michelle worked with our clinic team and our Detroit-based grassroots clients to fight for energy justice for all, especially for low-middle-income and Black, Indigenous, and People of Color (BIPOC) communities whom the energy system has historically harmed.

Michelle sought out this energy justice work in the first place after seeing firsthand how her family struggled to pay their bills growing up, including their utility bills. Michelle not only helped her mom pay these bills throughout college, but she also still helps her grandmother pay utility bills today. Additionally, because Michelle has volunteered as a community organizer on both local issue-based and electoral campaigns since 2020, I know she was excited to work directly with community-based organizations as a clinic student. These experiences have enabled Michelle to understand even better some of the challenges our clients face and to advocate on their behalf more effectively.

As I indicated in my opening paragraph, Michelle has drafted substantial amounts of written work filed by the clinic. As one example, Michelle was the primary drafter for an initial brief for the rate case. The initial brief represents one of the most comprehensive explanations of our client's positions, totaling approximately 120 pages and spanning eight core issue areas. She wrote that brief in less than seven weeks, starting with no knowledge of energy law in general, the relevant legal standards in Michigan, the history of prior proceedings, or the details of DTE's request—which spanned approximately 30 witnesses and 3,000 pages of submissions—or those of our clients and other intervenors—of similar scope as the DTE materials. She converted our clients' ambitious—arguably beyond scope—requests into clear, concise, and well-supported arguments. In that case, Michelle also took ownership over drafting another forty pages for the reply brief, exceptions (filed in response to the Administrative Law Judge's Proposal for Decision), and replies to exceptions. For her second case, the integrated resource plan case, Michelle worked with our team and expert witness to draft direct testimony, where she took primary responsibility over the sections advocating for our client's positions on energy efficiency, community solar, and distributed generation. Our expert witness founded our client due to community concerns about DTE's failures to include historically-disadvantaged communities in the energy transition, so I needed to have my most capable student—Michelle—drafting that portion of his direct testimony.

In addition to her excellent writing ability, Michelle researches new problems and solutions efficiently and thoroughly. For example, in preparing direct testimony on community solar and energy efficiency, Michelle found recent reports and research that supported our advocacy. Since I had worked on these issues for this client for almost seven years, it was easy for me to rely on what I knew and not look for new materials. Michelle convinced me that we could—and should—do better for our client and found additional resources that substantially improved the quality of the factual support for our positions. In that same case, in preparing for an upcoming initial brief, Michelle also prepared research on Michigan's integrated resource planning statute as well as current federal and state environmental laws. Again, this is an area in which I had assumed we would make the same arguments as we always make, but Michelle showed me through her research that we could sharpen our arguments and make them substantially stronger.

Michelle has shown that she works effectively alone as well as collaboratively in groups. For her initial brief assignment, she took ownership of the project, managing workflow from initial research to the final proofing and filing stages. While she can work independently when required, she also enjoys working on small teams. She voices her own opinions in both team-wide and internal-student meetings while also making space for others to participate and contribute. Michelle respectfully speaks up when she thinks the client, the team, and I are heading down the wrong path. She also enjoys the iterative process of swapping drafts with others, including helping to edit others' work and learning from others' feedback. I have seen firsthand how her comments and edits on a fellow student's draft have significantly improved her colleague's work.

Less glamorously but also critically, Michelle volunteers to take on new tasks when needed. For example, she organized the team's effort to sift through and summarize more than 800 pages of testimony supplied by one of our electric utilities in a new and

Mark Templeton - templeton@uchicago.edu - 773-702-9494

upcoming rate case. I have also appreciated that she often volunteers to take on projects that are needed but may be less captivating, such as creating discovery tracking spreadsheets, preparing slide decks summarizing our clinic's work, onboarding new members of the team, and uploading necessary discovery and testimony files to our shared folders. I rely on her heavily—as essentially a senior associate—to keep the team functioning smoothly and headed in the right direction. This was particularly important to me, her team, and her client this year because I was the clinic's sole supervisor for twenty students across five teams—my junior colleague having left at the beginning of the year to run Northwestern Law School's environmental colleagues—and because we were without a legal assistant for three months.

I cannot write Michelle strongly enough. She is extraordinary: the quality of her research, writing, client engagement, and commitment to her work, her team, and her client set a new high-water mark for the clinic. She will be a valuable asset to you and your chambers. Please do not hesitate to contact me at templeton@uchicago.edu or 773-702-6998 if I can assist further.

Respectfully,

Mark Templeton
Clinical Professor of Law
Director, Abrams Environmental Law Clinic

Mark Templeton - templeton@uchicago.edu - 773-702-9494

Joshua C. Macey
Assistant Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
jmacey@uchicago.edu | 773-702-9494

June 14, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to write this letter of recommendation in support of Michelle David. I know Michelle well. I hired her as a research assistant in summer 2022, taught her in my Energy Law class, and supervised her Law Review Comment, which will be published in the coming months. Michelle is extremely intelligent, hard-working, and compassionate. She would make a terrific law clerk. I recommend her without reservation.

Michelle has all the usual characteristics of successful law clerks. Her grades are excellent. She is the managing editor of the Chicago Law Review. She has emerged as a leader in her class.

But one thing that does not come across from her resume or transcript is that Michelle is an absolute force of nature. This initially took me by surprise. She is humble and soft-spoken. She never brags about herself. But her will and her work ethic are beyond anything I've seen in a student. My colleague Hajin Kim and I asked Michelle to help us study unanticipated consequences of recent trends in corporate governance and corporate sustainability. We are particularly concerned that ESG campaigns are causing large publicly-traded firms to sell assets to private companies with worse environmental records.

Michelle did an amazing job. She had no experience with corporate law. The research tasks were unpleasant and complex. She had to track down databases and convince regulators to share data they were not required to share under open records laws. Over the course of the summer, Michelle tracked down and compiled all the information we needed. I had submitted open records requests the previous year to get this information. They were universally denied. Michelle was ruthless in pestering with regulators, directing them to the proper legal authority when they denied her requests, and tracking down all the information Hajin and I needed—often before we ourselves knew the information was available or useful.

Since last summer, I've gotten to know Michelle well both personally and intellectually. All our interactions have confirmed my initial view that Michelle is an brilliant woman who will have an impressive and meaningful legal career. Michelle wrote one of the strongest exams in my forty-three-person Energy Law class. Michelle's Law Review Comment (Chicago's version of Law Review Notes) considers the application of Comprehensive Environmental Response, Compensation, and Liability ACT (CERCLA) to orphaned uranium mines. Michelle's Comment makes novel doctrinal point; she conducted significant original research in tabulating the orphaned uranium mines in the United States; and she avoided the primary sin of most law review comments, which is to let her normative priors color her views about the right legal question.

I should also say a few things about Michelle's background. Michelle was born in the Chicago and moved to Atlanta when she was nine. Unlike many top law students, Michelle does not come from privilege. She was raised almost entirely by her mother, who is a Thai immigrant and who worked as a server at Thai restaurants and a barista at Starbucks. Because her family was always financially stressed, Michelle was not allowed to play youth sports or participate in many other extracurricular activities. To study music, she had to find funding to support her. When her mother lost her job the year she started college, her family went on food stamps and welfare. As a result, during Michelle's first year of college, she ended up working twenty hours a week so that she could send money back to her family. She also moved in with her grandmother to save money on rent. Unfortunately, that required her to spent more than an hour commuting to and from classes.

I mention all this because it underscores how remarkable it is that Michelle has consistently reached enormous levels of professional and academic success. Despite the many demands on her time, Michelle has been a leader in every educational and professional environment in which she's found herself. She directs Chicago's Environmental Law Society. In that capacity, she organized a talk on "Environmental Racism in Chicago" with a community organizer from the Southeast Side who had worked on the Stop General Iron campaign. She set up a toxic tour that was led by the Black-led community-based organization People for Community Recovery of the area surrounding Altgeld Gardens. She also set up Chicago's first "Indigenous Environmental Justice" talk.

Some of the most interesting conversations I've had with Michelle involve the socioeconomic biases of law school. For example, Michelle has told me that she has felt excluded from many core law review experiences because she could not afford the \$128 admission to Barrister's Ball or participate in the public interest auction.

Joshua Macey - jmacey@uchicago.edu

As I hope is clear, I think the world of Michelle. She is highly intelligent, humble, and deeply committed to her family and to public service. She would be a terrific law clerk. Please do not hesitate to contact me if you have any further questions.

Sincerely yours,
Joshua C. Macey

Joshua Macey - jmacey@uchicago.edu

MICHELLE DAVID

633 S. Plymouth Ct., Apt. 407, Chicago, IL 60605 | madavid@uchicago.edu | (847) 528-4100

WRITING SAMPLE

I prepared a Comment on the U.S. government's liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for unremediated uranium mines on the Navajo Nation. The attached writing sample is an excerpt from an early draft of that Comment and includes the Introduction, some of the factual background (Section I.A, Section I.B), and some of the legal analysis (Section II.B.2). For the purpose of this writing sample, I have also omitted or adjusted some content for length, but I have included below the abstract and full table of contents for context.

This draft reflects edits that are primarily my own, though I received general feedback during Fall 2022 on the overall substance and direction of the Comment. I am currently in the process of revising my Comment, but it has already been accepted for publication and is forthcoming in the *University of Chicago Law Review*. It follows the *Law Review*'s specific style guide.

ABSTRACT

This Comment delves into the Cold War legacy of uranium mining on the Navajo Nation. Today, unremediated hazardous waste from more than five hundred deserted mines has continued to poison the health and lands of the Navajo. This Comment argues that the federal government is ultimately liable for the remediation of these mines under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, because the federal government held legal title to the mining lands and tightly managed the mining operations, the federal government satisfies CERCLA's liability regime for "owners" and "operators." The U.S. government's liability under CERCLA warrants fuller attention by the U.S. Environmental Protection Agency (EPA), Congress, and states in order to achieve the complete, long-overdue remediation of these mines.

CONTENTS

INTRODUCTION.....	2
I. THE PROBLEM OF UNREMEDIED URANIUM MINES	5
A. U.S. Uranium Mining Beginnings	6
B. The Consequences and Broken Trust	9
C. Prior Attempts to Compensate Victims and Remediate Mines.....	12
1. 1978 Uranium Mill Tailings Radiation Control Act.	13
2. 1990 Radiation Exposure Compensation Act.	14
3. 1980 Comprehensive Environmental Response, Compensation, and Liability Act.....	16
II. THE U.S. GOVERNMENT'S CERCLA LIABILITY	23
A. The Mechanics of CERCLA.....	23
B. The U.S. Government Is Liable for the Cleanup of Uranium Mines on Navajo Lands.....	28
1. Owner liability.....	30
2. Operator liability.	33
III. PRACTICAL CONSIDERATIONS.....	46
CONCLUSION	50

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Clean Up Your Act: The U.S. Government's CERCLA Liability for Uranium Mines on the Navajo Nation

INTRODUCTION

The Navajo Nation¹ is located across approximately twenty-seven thousand square miles of the U.S. Southwest at the corner of Arizona, New Mexico, and Utah.² It is home to nearly half of the Tribe's four hundred thousand enrolled members³ as well as over five hundred deserted uranium mines.⁴ Between World War II and the Cold War, these mines produced significant quantities of uranium ore under the U.S. government's direction in order to fuel the government's wartime nuclear ambitions. During this time, ore produced on Navajo lands totaled approximately thirty million tons⁵ or approximately 14% of total U.S. uranium production.⁶ Once uranium ore had been mined, mills refined the ore into concentrated "yellowcake," which was then further enriched into fuel suitable for nuclear power plants or the cores of nuclear weapons.⁷ Today, the hazardous waste left from the mining has severely and detrimentally impacted the health of the Navajo Nation, having led to a wave of cancers, deaths, and lifelong health problems.⁸

The cleanup of these mines has been slow and insufficient. Under the Comprehensive Environmental Response, Compensation, and Liability Act⁹ (CERCLA), the U.S. Environmental Protection Agency (EPA) has held a number of companies responsible for the cleanup costs of uranium mines,¹⁰ which include the

¹ Since 1968, "Navajo Nation" has been the official English name that the Navajo have adopted, and it is the name of the federally recognized tribe recognized by the U.S. government. See *Navajo History*, NAVAJO PEOPLE (Oct. 10, 2004), <https://perma.cc/M5HE-LQQE>. Before Spanish settlers introduced the term "Navajo," the Navajo traditionally referred to themselves as "Diné." TRACI B. VOYLES, *WASTELANDING: LEGACIES OF URANIUM MINING IN NAVAJO COUNTRY*, at xi (2015). Today, the Navajo use both "Diné" and "Navajo," *id.*, and this Comment will use "Navajo."

² *History*, NAVAJO NATION (last updated Sept. 20, 2022), <https://perma.cc/4FT3-ZT5S>.

³ Simon Romero, *Navajo Nation Becomes Largest Tribe in U.S. After Pandemic Enrollment Surge*, N.Y. TIMES (May 21, 2021), <https://www.nytimes.com/2021/05/21/us/navajo-choctaw-population.html> (describing enrollment hikes from 306,268 in 2020 to 399,494 in 2021).

⁴ *The Health and Environmental Impacts of Uranium Contamination in the Navajo Nation: Hearing Before the Comm. on Oversight and Government Reform*, 110th Cong. 21 (2007); Kate Selig, *Can a New EPA Office Expedite Uranium Cleanup on Navajo Land? Not if Past Is Prologue.*, & THE W. (Nov. 2, 2020), <https://perma.cc/BB6N-B773>.

⁵ *Navajo Nation: Cleaning Up Abandoned Uranium Mines*, U.S. ENVTL. PROT. AGENCY (last updated Aug. 22, 2022), <https://perma.cc/Y2AH-F3CJ> (reflecting production levels from 1944–1986).

⁶ U.S. ENVTL. PROT. AGENCY, *ABANDONED URANIUM MINES AND THE NAVAJO NATION: NAVAJO NATION AUM SCREENING ASSESSMENT REPORT AND ATLAS WITH GEOSPATIAL DATA*, at vii (2007).

⁷ Barbara Johnston, Susan Dawson & Gary Madsen, *Uranium Mining and Milling: Navajo Experiences in the American Southwest*, in *INDIANS & ENERGY: EXPLOITATION AND OPPORTUNITY IN THE AMERICAN SOUTHWEST* 112 (Sherry Smith & Brian Frehner eds., 2010).

⁸ Lauren Morales, *For the Navajo Nation, Uranium Mining's Deadly Legacy Lingers*, NPR (Apr. 10, 2016), <https://perma.cc/K3JU-LRXQ>.

⁹ Pub. L. No. 96-510, 94 Stat. 2767 (codified as amended in scattered sections of 42 U.S.C.).

¹⁰ See generally, e.g., *Case Summary: Cleanup Agreement Reached at Former Uranium Mine on Spokane Indian Reservation*, U.S. ENVTL. PROT. AGENCY (last updated Aug. 23, 2022), <https://perma.cc/XTA9-PXXK> (referring to a 2012 settlement); *Case Summary: \$600 Million Settlement to Clean Up 94 Abandoned Uranium Mines on the Navajo Nation*, U.S. ENVTL. PROT. AGENCY (last updated July 25, 2022), <https://perma.cc/J6BM-E24N>; Consent Decree, *United States v. Newmont Mining Corp.*, 2:05-cv-00020, Dkt. No. 553 (Jan. 17, 2012) (requiring defendant companies to finance the cleanup of a uranium mine, following an initial, appealed trial court finding of CERCLA liability).

MICHELLE DAVID

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cost to permanently “prevent or minimize the release of hazardous substances” from “caus[ing] substantial danger to present or future public health or welfare or the environment.”¹¹ However, while the EPA has successfully obtained financing from companies for this kind of cleanup (or “remediation”) at certain mines, the EPA has not obtained financing for hundreds of *other mines* where the companies involved have already gone out of business or otherwise cannot afford remediation. In these “orphaned” mines cases, generally no remediation has occurred.¹²

The remediation of hazardous uranium mines has life-and-death stakes. Almost all of the orphaned mines sit within one mile of a natural water source, and many sit within close proximity of Navajo homes—some even within two hundred feet.¹³ Waste from the unremediated mines has contaminated Navajo drinking water and continues to spread through dust in the air.¹⁴ Studies corroborate that those living near uranium mines face an increased risk of developing cancers, kidney diseases, respiratory diseases, tuberculosis, and other chronic diseases.¹⁵ One recent study found that 26% of Navajo women possess uranium levels higher than those found in the “highest 5% of the U.S. population,”¹⁶ and other studies have previously linked uranium contamination to birth defects and other unfavorable birth outcomes.¹⁷ The ongoing and intergenerational legacies of these orphaned mines and the frustratingly slow pace of existing remediation efforts demand renewed attention and new solutions.

This Comment argues that, in the case of uranium mining, the federal government is itself liable for the contamination and, thus, remediation costs of orphaned uranium mines under CERCLA. Where hazardous substances from a site have contaminated an area, CERCLA holds any “owner” or “operator” of the site strictly liable and requires the liable party to fund all remediation efforts.¹⁸ The federal government

¹¹ 42 U.S.C. § 9601(24) (defining technically this kind of permanent cleanup operation as a “remedy” or “remedial action”).

¹² Selig, *supra* note 4 (“No mines have been cleaned up to date.”).

¹³ Mary F. Calvert, *Toxic Legacy of Uranium Mines on Navajo Nation Confronts Interior Nominee Deb Haaland*, PULITZER CTR. (Feb. 23, 2021), <https://perma.cc/MA84-TZFY> (“Experts estimate that . . . 85 percent of all Navajo homes are currently contaminated with uranium.”).

¹⁴ Cheyanne M. Daniels, *The US Nuclear Weapons Program Left ‘a Horrible Legacy’ of Environmental Destruction and Death Across the Navajo Nation*, INSIDE CLIMATE NEWS (June 27, 2021), <https://perma.cc/ZWG4-MRKP>.

¹⁵ See Susan E. Dawson & Gary E. Madsen, *Uranium Mine Workers, Atomic Downwinders, and the Radiation Exposure Compensation Act (RECA): The Nuclear Legacy, in HALF-LIVES & HALF-TRUTHS: CONFRONTING THE RADIOACTIVE LEGACIES OF THE COLD WAR* 117, 122–23 (Barbara R. Johnston ed., 2007).

¹⁶ Mary Hudetz, *US Official: Research Finds Uranium in Navajo Women, Babies*, ASSOCIATED PRESS (Oct. 7, 2019), <https://perma.cc/9ZVK-Y7AB>.

¹⁷ Johnston et al., *supra* note 7, at 121.

¹⁸ 42 U.S.C. § 9607(a).

MICHELLE DAVID

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was both an “owner” and “operator” of the uranium mines on Navajo lands. It not only held legal title to the Navajo lands where the mining took place, but it also extensively controlled the U.S. uranium market by directing uranium exploration efforts, determining uranium suppliers and production quotas, positioning itself legally as the sole buyer of uranium ore and enriched uranium, and manipulating mining contracts on Navajo lands to maximize production. As such, where no other solvent “owner” or “operator” can be identified for a particular mining site, the U.S. government should be held responsible for the cleanup costs.

This Comment proceeds in three parts. [Roadmap Omitted]

I. THE PROBLEM OF UNREMEDIED URANIUM MINES

[Roadmap Omitted]

A. U.S. Uranium Mining Beginnings

[Background on the Creation of the Atomic Energy Commission (AEC) Omitted] By 1948, government-led exploration and procurement of uranium were in full swing.¹⁹ For example, after first learning about some deposits of uranium ore on Navajo lands, the AEC mapped out a wide-scale exploration strategy and began encouraging companies to mine the large deposits on and near the reservation to support the war effort.²⁰ Navajos helped U.S. officials locate high-grade uranium deposits in exchange for promised jobs, discovery rewards, and economic prosperity.²¹ Hopeful in the promise of this prosperity, several prominent Navajo leaders advocated for the expansion of uranium development, framing it as a new form of “Navajo nationalism” and as development on their own terms.²² Fittingly, the twentieth-century uranium boom that swept across the Navajo Nation and elsewhere in the United States was termed “uranium fever.”²³

However, uranium mining was not all that it seemed to be. The federal government knew early on the health risks associated with radiation from the uranium mines, but it did not disclose those risks to miners

¹⁹ Doug Brugge & Rob Goble, *A Documentary History of Uranium Mining and the Navajo People*, in THE NAVAJO PEOPLE AND URANIUM MINING 25, 27 (Doug Brugge, Timothy Benally & Esther Yazzie-Lewis eds., 2006).

²⁰ See *id.*

²¹ Johnston et al., *supra* note 7, at 111, 115–17.

²² ANDREW NEEDHAM, *POWER LINES: PHOENIX AND THE MAKING OF THE MODERN SOUTHWEST* 233–36 (2014). Other Navajo activists called for their own version of “Navajo nationalism” in which the Navajo Nation would break from the extractive and colonial nature of mining and other similar operations. See *id.* at 218.

²³ Johnston et al., *supra* note 7, at 115 (“‘[U]ranium fever’ swept the United States Finding uranium, according to Gordon Dean, chairman of the AEC from 1950 to 1953, became a patriotic duty.”).

MICHELLE DAVID

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or their families for many years.²⁴ As early as the 1930s, the U.S. Public Health Service (PHS), an agency under the Department of Health and Human Services tasked with protecting the public health, had no doubt of the hazards posed by uranium mining due to comprehensive studies of uranium in Czechoslovakia and Germany.²⁵ Moreover, the PHS conducted its own epidemiological studies on the impact of radiation on the health of Navajo uranium miners beginning in 1949.²⁶ By 1950, the initial PHS results revealed radon exposures in mines on the Navajo Nation up to 750 times the acceptable limits.²⁷ By January 1951, internal records revealed that both PHS and AEC staff believed “radon [in uranium mines] was present in levels that would cause cancer.”²⁸ Despite the evidence discovered during this time and over the course of a decade-long study on the health risks from uranium mining,²⁹ the PHS and AEC struck a deal with the mining companies to not “divulge the potential health hazards to the workers” or “inform those who became ill that their illnesses were radiation related.”³⁰ This decision was part of an unethical compromise,³¹ and it denied many miners crucial information about their health risks until at least the 1960s.³²

Why did the federal government accede to this demand by the mining companies? PHS leadership did not want to “rock the boat” when it came to mining,³³ and the AEC was unwilling to risk the domestic uranium supply to any degree.³⁴ The AEC, in particular, continued to deny and downplay the mounting

²⁴ Brugge & Goble, *supra* note 19, at 33–34. [Background on Radiation and Uranium Omitted (citing PETER H. EICHSTAEDT, IF YOU POISON US: URANIUM AND NATIVE AMERICANS 47–49 (1994))]

²⁵ EICHSTAEDT, *supra* note 24, at 56 (explaining that at least one of the uranium mines that was subject to these European studies was known as “Siebenschlenhen” or “death mine”); Brugge & Goble, *supra* note 19, at 26–27 (“In 1926, clinical evaluation defined the histopathology of the lung cancer in miners. By 1932, Germany and Czechoslovakia had designated cancer in these miners as a compensable occupational disease.” (citations omitted)). In the United States, the Bureau of Labor Statistics had by 1929 also begun reporting radiation-related health risks for workers producing glow-in-the-dark watches and clocks. EICHSTAEDT, *supra* note 24 at 54–55 (“Grotesque . . . radiation poisoning had been documented in the early 1920s when factory workers in companies that produced luminescent dials began to lose their teeth, jaws, and finally their lives.”).

²⁶ EICHSTAEDT, *supra* note 24, at 51.

²⁷ *Id.* at 52. In other instances, such as one mine on the Navajo Nation that was run by the Vanadium Corporation of America and whose miners were 95% Navajo, the readings of these mines in the worst cases exceeded the “allowable weekly doses [of radiation] in less than one day and were reaching total annual doses in just a week [by contemporary standards].” *Id.*

²⁸ Doug Brugge & Rob Goble, *The History of Uranium Mining and the Navajo People*, 92 AM. J. PUB. HEALTH 1410, 1413 (2002) (describing the records of an internal meeting between the AEC and PHS on January 25, 1951).

²⁹ Dawson & Madsen, *supra* note 15, at 122.

³⁰ Johnston et al., *supra* note 7, at 120; EICHSTAEDT, *supra* note 24, at 65 (stating that miners with identified health problems were “only informed . . . after they had contracted a fatal disease” and with no notice that the problems could be radiation-related) (emphasis added).

³¹ Brugge & Goble, *supra* note 19, at 32 (“The centerpiece of the Nuremberg Code, promulgated in 1947 and widely publicized, was the provision of informed consent to persons enrolled in research studies. The PHS study clearly violated a central tenet of [that] standard of care.”).

³² Dawson & Madsen, *supra* note 15, at 127.

³³ Brugge & Goble, *supra* note 28, at 1413 (quoting Victor Archer, head of the PHS medical team).

³⁴ VOYLES, *supra* note 1, at 112. President Harry Truman clarified the AEC’s understood role in maximizing production in his memoir: “The Joint Committee [on Atomic Energy, which oversaw the AEC,] was primarily concerned with atomic development[] . . . and [] was always pushing for more production.” HARRY S. TRUMAN, MEMOIRS BY HARRY S. TRUMAN: VOLUME TWO: YEARS OF TRIAL AND HOPE 297 (1956).

MICHELLE DAVID

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evidence for several years in order to achieve its uranium supply goals. In 1953, the AEC’s chairman wrote to the Senate Joint Committee on Atomic Energy: “[T]he exposure accumulated to date by the individual miners in the uranium mines has not been sufficiently great to have produced injuries.”³⁵ In 1954, while the AEC began experimenting with ventilation to reduce the radiation-related health risks and released a report recommending ventilation standards, its report ultimately did not require companies to install ventilation nor did it take up any other recommendations advocated by the PHS.³⁶ Of course, companies largely ignored these recommendations.³⁷ As the AEC’s actions indicate, the agency was in the business of pursuing uranium development at all times and at any cost, including to health. [Paragraph Shorted for Length]

B. The Consequences and Broken Trust

[Background on U.S.–Navajo Trust Relationship Omitted] The Navajo only learned of the devastating consequences of the uranium once miners began to fall ill and die of cancers and other diseases in mass numbers.³⁸ Marie Harvey, the daughter of one Navajo uranium miner, recounted: [Block Quote Omitted] Marie’s story is not uncommon. Professors Barbara Johnston, Susan Dawson, and Gary Madsen found that Navajo miners often “worked in dusty mine shafts, eating their lunch there, drinking water from sources inside the mine, and returning home to their families wearing dust-covered radioactive clothing.”³⁹

The hazardous waste produced by mining operations also contaminated the water supply and soil for the surrounding communities⁴⁰—to say nothing of the fact that miners and their families frequently lived on-site in company-provided housing or lived nearby.⁴¹ No one properly informed the Navajo about the dangers of kids playing on tall piles of the leftover ore (“tailings”) or families building homes amid—and even at times with⁴²—contaminated debris, further seeping uranium into all parts of Navajo life.⁴³ As a

³⁵ EICHSTAEDT, *supra* note 24, at 69 (quoting Letter from Lewis L. Strauss, Chairman, Atomic Energy Comm’n, to W. Sterling Cole, Chairman, Joint Comm. on Atomic Energy (July 13, 1953)).

³⁶ VOYLES, *supra* note 1, at 111 (explaining that the AEC did not oversee or enforce its ventilation recommendations).

³⁷ EICHSTAEDT, *supra* note 24, at 71. [Note on Responsibility of Mining Companies Omitted]

³⁸ Johnston et al., *supra* note 7, at 120–21.

³⁹ *Id.* at 120.

⁴⁰ *Id.* at 120–22; EICHSTAEDT, *supra* note 24, at 181–82.

⁴¹ Johnston et al., *supra* note 7, at 121–22, 124.

⁴² VOYLES, *supra* note 1, at 136–38 (explaining that companies used radioactive tailings as materials to build homes and other buildings).

⁴³ Sherry Smith & Brian Frehner, *Introduction*, in *INDIANS & ENERGY: EXPLOITATION AND OPPORTUNITY IN THE AMERICAN SOUTHWEST* 1, 10 (Sherry Smith & Brian Frehner eds., 2010); VOYLES, *supra* note 1, at 139.

MICHELLE DAVID

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result, not only did the miners battle cancer and early deaths, but the families of miners also experienced birth defects, miscarriages, throat cancer, skin lesions and sores, and cleft palates.⁴⁴

[Summary of Navajo Response (Protests, Community Programming, Other Relief) Omitted]

C. Prior Attempts to Compensate Victims and Remediate Mines [Omitted]

II. THE U.S. GOVERNMENT'S CERCLA LIABILITY

[Roadmap Omitted]

A. The Mechanics of CERCLA [Omitted]

B. The U.S. Government Is Liable for the Cleanup of Uranium Mines on Navajo Lands

[Roadmap Altered & Abbreviated] This Section argues that the U.S. government is liable under CERCLA for its involvement as an “operator” and “owner” of uranium sites on Navajo lands. [Text Omitted] As an initial matter, the definitions of owner and operator are not well defined by the statute. CERCLA does not define “owner” or “operator” in any instructive way—instead, it circularly defines each as a party that owns or operates a facility.⁴⁵ In response to this ambiguity, the courts have stepped in to design their own standards, often based upon the ordinary meaning of “owner” and “operator.”⁴⁶ While some courts may disagree with one another in certain respects, courts universally agree that determining whether an actor is a PRP [Edit to Add: Potentially Responsible Party] is a fact-intensive inquiry that considers the totality of the circumstances.⁴⁷ This Section proceeds by first presenting the case for owner liability, the strongest case. It then presents the case for operator liability, the inquiry of which is highly fact intensive. [Text Omitted] The U.S. government is likely independently liable under both categories, given its strong property rights and extensive control of the uranium market. [Text Omitted]

1. Owner liability. [Omitted]

2. Operator liability.

a) *Case law defining “operator” liability.* Despite not directly owning a facility or incurring owner liability, an entity can still be held liable under CERCLA as an “operator.” [Paragraph and Text Omitted]

⁴⁴ VOYLES, *supra* note 1, at 141–42; Johnston et al., *supra* note 7, at 121.

⁴⁵ Kiersten Holms, Note, *This Land Is Your Land, This Land is Mined Land: Expanding Governmental Ownership Liability Under CERCLA*, 76 WASH. & LEE L. REV. 1013, 1026 (2019). The Supreme Court labeled them “useless[].” *United States v. Bestfoods*, 524 U.S. 51, 66 (1998).

⁴⁶ See, e.g., *Redwing Carriers, Inc. v. Saraland Apartments*, 94 F.3d 1489, 1498 (11th Cir. 1996) (turning to state law to define the ordinary meaning of “owner” and “operator”).

⁴⁷ See, e.g., *Tosco Corp. v. Koch Indus., Inc.*, 216 F.3d 886, 892 (10th Cir. 2000).

MICHELLE DAVID

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on *United States v. Bestfoods*⁴⁸] “Operation” under CERCLA means “more than mere mechanical activation of pumps and valves, and must be read to contemplate ‘operation’ as including the exercise of direction over the facility’s activities.”⁴⁹ The Supreme Court in *Bestfoods* further specified: “[A]n operator must manage, direct, or conduct operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations.”⁵⁰ Importantly, the *Bestfoods* court also clarified that the question of operator liability is an inquiry into the relationship between the entity in question and the facility itself.⁵¹ A court can only hold an entity liable as an operator if the entity had a certain degree of direct control over the facility itself—beyond simply a relationship to a separate entity that is actually directly controlling the facility.

In sharpening the *Bestfoods* standard, two additional points are instructive. First, even if the U.S. government does not directly enter into a contract with a facility and instead acts as a regulator over that facility, operator liability can still attach to the government if the regulation is sufficiently intense. In *FMC Corp. v. U.S. Department of Commerce*,⁵² the dissent characterized the federal government’s activity as purely “regulatory” in part because the government imposed certain regulations on but did not directly purchase from the facility in question—which produced rayon, a rubber substitute.⁵³ Rather than possessing a direct contract with the U.S. government, the rayon facility first sold its rayon to a separate company (for tire production) before the rayon made its way into the U.S. government’s World War II vehicles.⁵⁴ Under these facts and in contrast to the dissent, the Third Circuit en banc reasoned that operator liability applies to the government as long as it effectively possesses substantial *actual* control over the facility. The court then held the U.S. liable as an operator because it “determined what product the facility would produce, the level of production, the price of the product, and to whom the product would be sold.”⁵⁵

⁴⁸ 524 U.S. 51 (1998).

⁴⁹ *Id.* at 71.

⁵⁰ *Id.* at 66–67.

⁵¹ *Id.* at 67–68; see also *MPR Props. Co., LLC v. United States*, 583 F. Supp. 3d 981, 992, 996 (E.D. Mich. 2021), *appeal docketed*, No. 22-1789 (6th Cir. Sept. 8, 2022).

⁵² 29 F.3d 833 (3d Cir. 1994) (en banc).

⁵³ See *id.* at 854 (Sloviter, C.J., dissenting).

⁵⁴ See *id.* at 835–36 (majority opinion); see also *id.* at 854 (Sloviter, C.J., dissenting).

⁵⁵ *Id.* at 843 (majority opinion).

MICHELLE DAVID

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Second, the operator standard requires affirmative acts by the PRP. Per the Sixth Circuit in *United States v. Township of Brighton*,⁵⁶ an operator must perform specific affirmative acts (rather than merely acts of omission),⁵⁷ and neither the plain *ability* to control⁵⁸ nor the plain *ability* to regulate⁵⁹ a facility will amount to operator liability. In 2020, the Third Circuit in *PPG Industries Inc. v. United States*⁶⁰ similarly stated that mere formal or general control over a facility is insufficient to attach operator liability.⁶¹ Instead, relying on *Bestfoods*, the Third Circuit held that operator liability would additionally require “some indicia of control over the facility’s polluting activities.”⁶² The Ninth Circuit⁶³ and a Michigan district court⁶⁴ agree.

In applying these “operator” standards to the Navajo uranium mines, the facts of three cases are most relevant. Each case is explained in turn below, before this Section then turns to comparing their facts to those of the uranium mines at hand. The first helpful case here, already mentioned *supra* in this Section, is *FMC*. Prior to World War II, the United States sourced 90% of its crude rubber supply from Asia, but this supply suddenly vanished following Pearl Harbor because most of this rubber was imported from Japanese-occupied territory.⁶⁵ In response, President Franklin D. Roosevelt empowered the War Production Board to “issue directives to industry” that dictated and expedited the production process for wartime goods such as rayon.⁶⁶ In light of this extensive power, *FMC* held the government liable as an operator of the rayon facility at issue in the case. The court reasoned that, because the government mandated rayon production, controlled the distribution of raw materials, and was the end user of almost all rayon, it essentially set the operating level and profit of each rayon company.⁶⁷ Moreover, the *FMC* court found that the federal government was directly tied to the hazardous waste generated. Because the waste was highly visible and inherent to the

⁵⁶ 153 F.3d 307 (6th Cir. 1998).

⁵⁷ *Id.* at 315.

⁵⁸ *Id.* at 314 (finding the “actual control” standard instructive, as opposed to the “ability to control” or “authority to control” standards).

⁵⁹ *Id.* at 316; *see also* *United States v. Sterling Centrecorp Inc.*, 977 F.3d 750, 758–59 (9th Cir. 2020) (finding the operator standard unmet because the government possessed only “general” wartime “regulatory authority” and had merely instructed the gold mine at issue to shut down).

⁶⁰ 957 F.3d 395 (3d Cir. 2020).

⁶¹ *Id.* at 403.

⁶² *Id.*

⁶³ The Ninth Circuit held that operator liability requires “actual participation in decisions related to pollution.” *Centrecorp*, 977 F.3d at 758.

⁶⁴ In *MRP Properties Co. v. United States*, a Michigan district court stated: “*Bestfoods* ‘sharpen[ed]’ the definition of an ‘operator’ for CERCLA purposes by broadening the ‘actual control’ inquiry to include control over ‘operations *having to do with* leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations.’” 583 F. Supp. 3d 981, 995–96 (E.D. Mich. 2021).

⁶⁵ *FMC*, 29 F.3d at 836.

⁶⁶ *Id.*

⁶⁷ *Id.* at 837.

MICHELLE DAVID

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rayon production process, the federal government had knowledge of the vast amounts of hazardous waste generated.⁶⁸ Despite this knowledge, the government continued to “pressure” facilities to maximize production levels—levels that necessarily increased the amount of material disposed.⁶⁹ Lastly, the court found that the government increased hazardous waste by rejecting materials that did not adhere to stringent production specifications and by generating waste directly from its government-owned equipment.⁷⁰

A second helpful case is *MRP Properties Co. v. United States*.⁷¹ During World War II, the federal government created the Petroleum Administration for War (PAW), a national oil agency that “exercised significant control over”⁷² the “prices, profits, and allocation of petroleum products and the raw materials needed to create them.”⁷³ PAW was subdivided into regional districts—each of which “supervised, among other things, the production, refining, supply, transportation, distribution, and marketing of petroleum products.”⁷⁴ Moreover, PAW planned oil production up to a year in advance—tracking production on a per-refinery basis and allocating monthly quantities to refineries⁷⁵—and it reserved “final approval” over all oil production.⁷⁶ The relevant issue in *MRP Properties* was whether the United States was liable as an “operator” under CERCLA for its involvement in the domestic oil industry during World War II.⁷⁷ The court concluded on summary judgment that the federal government, through PAW, exercised sufficient control over twelve refineries such that the United States was liable as an operator under CERCLA.⁷⁸ In addition to pointing to PAW’s control over the prices, profits, quantities, and raw materials necessary for oil production, the *MRP Properties* court was persuaded that the World War II defense market for oil was a monopsony,⁷⁹ a type of market where there is only one buyer. Because the U.S. government’s monopsony created an unequal distribution of power between the U.S. government and the facility—where the facility

⁶⁸ *Id.* at 837–38.

⁶⁹ *Id.* at 838.

⁷⁰ *FMC*, 29 F.3d at 838.

⁷¹ 583 F. Supp. 3d 981 (E.D. Mich. 2021).

⁷² *Id.* at 987 (quoting *Shell Oil*, 294 F.3d at 1049).

⁷³ *Id.*

⁷⁴ *Id.* at 988.

⁷⁵ *Id.*

⁷⁶ *MRP Props.*, 583 F. Supp. 3d, at 988.

⁷⁷ *Id.* at 991.

⁷⁸ *Id.* at 998.

⁷⁹ *Id.* at 999.

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was essentially at the will and whim of the government—the court concluded that the facility did not truly operate voluntarily or independently of the government.⁸⁰

The third relevant case is *Exxon Mobil Corp. v. United States*,⁸¹ in which a Texas district court held the U.S. government liable as an operator of two chemical plants⁸² but declined to hold it liable as an operator for two oil refineries.⁸³ For the chemical plants, the *Exxon* court found that the government approved plant designs and required governmental approval for waste disposal plans, expenditures above \$1,000, plant alterations, and employee salary and benefits.⁸⁴ The court also concluded that the government “knew” the facility was disposing of spent waste in open basins, and it delayed improvements in waste-processing at the plants in order to maximize production.⁸⁵ Knowledge of the increased waste along with the government’s significant management of the facility justified operator liability.

In contrast to its conclusions regarding the chemical plants, the *Exxon* court found that the government’s role regarding the oil refineries was more akin to that of a “very interested consumer” involved in voluntary, consensual—not coercive—contracts.⁸⁶ For the refineries at issue, the court found that the parties neither negotiated nor specified via contract the disposal activities,⁸⁷ and the government did not design, specify, or provide any of the refinery equipment.⁸⁸ The court further held that the government’s general wartime ““authority to control”” private entities was not itself sufficient to confer PRP status because a “direct nexus” to decisions over waste disposal was necessary.⁸⁹

b) Applying the law to Navajo uranium mines that were active between 1948 and 1970. The federal government’s control over uranium mines on the Navajo Nation between 1948 and 1970 rises to the level of operator liability and closely follows the facts of the *FMC* rayon facility, *MRP Properties’* oil refineries,

⁸⁰ *Id.*

⁸¹ 108 F. Supp 3d 486 (S.D. Tex. 2015).

⁸² *Id.* at 531–32.

⁸³ *Id.* at 529, 532.

⁸⁴ *Id.* at 531.

⁸⁵ *Id.*

⁸⁶ *Exxon*, 108 F. Supp. 3d at 523 (quotation marks omitted). An Idaho district court similarly held that the U.S. government was not an “operator” in its involvement in metal mining activities because the “mines and mills were not forced to produce” and instead simply “elected” to do so. *Coeur D’Alene Tribe v. Asarco Inc.*, 280 F. Supp. 2d 1094, 1129 (D. Idaho 2003).

⁸⁷ *Exxon*, 108 F. Supp. 3d at 525.

⁸⁸ *Id.* at 526.

⁸⁹ *Id.* at 524.

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and *Exxon* chemical plants. The federal government not only founded the U.S. uranium market but also drove and controlled it over several decades, particularly during the period between 1948 and 1970.⁹⁰ The Section proceeds by first discussing generally the AEC's control over the domestic uranium industry between 1948 and 1970, when most uranium mines on Navajo lands operated.⁹¹ It then discusses circumstances specific to the Navajo that reinforce the U.S. government's liability for these mines. On the Navajo Nation, in particular, the U.S. government wielded extraordinary influence in setting the terms of mining contracts without meaningful consultation with the Navajo.

From 1948 to 1970, the federal government had a complete stranglehold on the domestic uranium market—one akin to, if not exceeding, the likes of *FMC*, *MRP Properties*, and *Exxon*. Key to the U.S. government's operator liability is that it directly managed mining operations on Navajo lands in order to achieve breakneck-speed production, leading to anticipated and known increases in waste and disregard for the consequences of poor waste disposal. The U.S. government achieved this level of control in two ways: (1) generally, it dictated the exploration of raw ore, set the price of the ore, and decreed itself the sole buyer of enriched uranium in the end use-market; and (2) specifically, it circumvented and displaced meaningful Navajo management of mining operations through hands-on negotiation and approval of mining contracts.

First, like in *MRP Properties* and *FMC*, the U.S. government established the “prices, profits, and allocation[s]”⁹² for uranium mining operations so as to maximize production levels. In *MRP Properties*, PAW managed the raw materials necessary for oil production, set oil prices a year in advance, and maintained a monopsonistic market.⁹³ In *FMC*, the U.S. government similarly controlled the distribution of raw materials, set production levels, and was the end user of all rayon.⁹⁴ Here, the same is also true: the AEC managed exploration efforts and product requirements, set price guarantees for ore, and decreed itself the sole buyer and end user.

⁹⁰ See VOYLES, *supra* note 1, at 62 (2015) (“[T]he search for uranium has been the only government-induced, government-maintained, government-controlled mining boom in the nation’s experience.”) (quoting Herbert Lang, *Uranium Mining and the AEC: The Birth Pangs of a New Industry*, 36 BUS. HIST. REV. 325, 325 (1962)).

⁹¹ Brugge & Goble, *supra* note 19, at 28.

⁹² *MRP Props.*, 583 F. Supp. 3d at 987.

⁹³ *Id.* at 987–88, 999.

⁹⁴ *FMC*, 29 F.3d at 843.

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With respect to exploration and product requirements, the AEC tightly monitored the search for high-quality uranium ore. In 1948, the AEC, in coordination with the science- and resource-focused U.S. Geological Survey (USGS) launched a large-scale exploratory effort to identify uranium deposits on U.S. public lands, including airborne surveys and on-site drill tests.⁹⁵ If uranium was discovered, the AEC then leased the land to companies to mine.⁹⁶

With respect to price controls, the AEC developed three- and ten-year price guarantees beginning in 1948 for the delivery of uranium ore to U.S. purchasing stations, along with bonuses for especially high-grade ore.⁹⁷ These newly constructed AEC purchasing stations were scattered throughout the West, and, at these sites, U.S. government contractors would weigh, inspect, and purchase the ore at the predetermined prices.⁹⁸ Moreover, the AEC even provided “haulage allowance[s]” to compensate mining companies for delivering the ore to these purchasing stations.⁹⁹ Through these on-the-ground purchasing stations, the AEC could tightly oversee and track production on a regional and per-mine basis. While the AEC adjusted its pricing schemes over time,¹⁰⁰ they remained a key fixture in the uranium industry through the end of the 1960s, fueling the United States’ nuclear ambitions throughout much of the Cold War.¹⁰¹ This national procurement program jolted the uranium industry into production and spurred a new generation of uranium explorers hoping to strike it rich.¹⁰²

Lastly, with respect to maintaining a monopsony, the AEA installed the United States as the “sole legal buyer, refiner, and producer of uranium ore for atomic energy use” from the get-go.¹⁰³ As a result, private companies could legally sell uranium ore only to the federal government for further enrichment and use. The AEC did not begin breaking down this total monopsony until 1958, when it announced that AEC-licensed private companies could also purchase domestic yellowcake—enriched ore, as opposed to raw ore

⁹⁵ MICHAEL A. AMUNDSON, *YELLOWCAKE TOWNS: URANIUM MINING COMMUNITIES IN THE AMERICAN WEST* 22 (2002).

⁹⁶ *Id.* at 22.

⁹⁷ *Id.*

⁹⁸ *Id.* at 22. The government also financed new roads and airports to increase uranium accessibility. VOYLES, *supra* note 1, at 104–05.

⁹⁹ CHARLES RIVER ASSOCS. INC., *URANIUM PRICE FORMATION* 3-13 (1977).

¹⁰⁰ In 1962, the federal government ended its price guarantees for ore, but it replaced the ore price guarantees with mill price guarantees. *Id.* at 3-15. These mill guarantees still dictated ore rates, though less directly. *See id.* at 3-15 n.5 (“The AEC nonetheless controlled ore prices to some extent through the mill contracts. If ore prices were out of line, the AEC could exert pressure to correct this before signing the mill contract.”).

¹⁰¹ *See* AMUNDSON, *supra* note 95, at 30–31.

¹⁰² *Id.* at 26 (recounting popular stories from the time that described “rags-to-riches” Americans, who were dubbed “‘uraniumaires’”).

¹⁰³ *Id.* at 20; VOYLES, *supra* note 1, at 119.

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from mines—in order to develop a commercial nuclear energy industry.¹⁰⁴ No matter the buyer, however, the U.S. government maintained a monopoly on all domestic enrichment services for every uranium end use, meaning private companies were required to contract with the government for all enrichment services.¹⁰⁵ In other words, even though private companies could now buy yellowcake for commercial purposes, the yellowcake only reached their hands after the U.S. government first purchased the ore from uranium mines and then enriched it into yellowcake itself.¹⁰⁶ While the AEC began allowing private companies to purchase uranium ore directly from mines and mills in 1964,¹⁰⁷ the U.S. government remained the sole end user of ore from many companies through 1970.¹⁰⁸

Beyond the U.S. government's general controls over mining, the government directly managed and oversaw mining contracts, and this was nowhere clearer than in the case of mining contracts on Navajo lands. When the AEC hoped to establish mining on tribal lands, it worked with the Bureau of Indian Affairs (BIA) to negotiate the contracts with private entities, then presented the contract to the Navajo Tribal Council for official approval.¹⁰⁹ Although the AEC advised the public that formal approval from the Navajo Tribal Council was required before exploration or mining activities could occur on Navajo lands—in accordance with the 1938 Tribal Mineral Leasing Act¹¹⁰—this approval was commonly disregarded or treated as mere formality.¹¹¹ The AEC or BIA often presented pre-negotiated mining contracts to the Navajo Tribal Council as economic development initiatives requiring only a final seal of approval.¹¹²

Before these contracts would have reached the tribal approval phase, the AEC would have already set the ore, milling, and haulage costs in the contracts and established production quotas.¹¹³ Moreover, the AEC

¹⁰⁴ AMUNDSON, *supra* note 95, at 109.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See Private Ownership of Special Nuclear Materials Act of 1964, Pub. L. No. 88-489, 78 Stat. 602 (1964) (codified in scattered sections of 42 U.S.C.).

¹⁰⁸ AMUNDSON, *supra* note 95, at 20, 23, 109; see also CHARLES RIVER ASSOCS., *supra* note 99, at 3-20 (“The AEC remained the only legal purchaser of [enriched uranium] until 1966, and commercial purchases for current delivery after 1966 were initially very small. AEC procurement ended entirely in 1970.”). By the late 1960s, the uranium industry was faltering. AMUNDSON, *supra* note 95, at 106-07. As a result, the government allowed companies to defer their contracts—initially set to expire by 1966—through 1968 until the commercial industry could take off. *Id.* at 108. Through its “stretch-out” program, the United States promised to purchase uranium from deferring companies through 1970. *Id.*

¹⁰⁹ Johnston et al., *supra* note 7, at 117.

¹¹⁰ Pub. L. No. 75-506, 52 Stat. 346 (1938); see also VOYLES, *supra* note 1, at 77.

¹¹¹ VOYLES, *supra* note 1, at 64. Prospectors were unlikely to know how to seek tribal approval or if they were even on tribal lands. *Id.* at 66.

¹¹² Johnston et al., *supra* note 7, at 117; VOYLES, *supra* note 1, at 81.

¹¹³ AMUNDSON, *supra* note 95, at 29; see also Testimony of Defendants’ Expert Witness, Dr. Jay Brigham, *El Paso Nat. Gas Co. v. United States*, 3:14-cv-08165, Dkt. No. 196, at *30 (D. Ariz. Mar. 1, 2019) [hereinafter Brigham Testimony].

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would only approve contracts once prospective companies had submitted proposals demonstrating their ability to meet strict AEC requirements regarding “ore supply, technical capability, and financial responsibility.”¹¹⁴ Once a company had met all of the requirements, however, the federal government intentionally made the path to profit easy for these companies, which received large benefits and allowances.¹¹⁵ These contracts “open[ed] [Navajo lands] up to prospectors, miners, and, eventually, mills for processing the ore and mill tailings piles for dumping the inevitable waste.”¹¹⁶

Importantly, while the Navajo did seek out and approve mining contracts in the hopes of spurring economic growth, the U.S. government manipulated the process. These contracts were designed to maximize production and consequently “degraded” rather than improved the Navajos’ ability to benefit economically as a tribe.”¹¹⁷ And, once the leases were executed, the Navajo could not terminate them without approval from the U.S. Department of the Interior.¹¹⁸ This one-way ratchet was especially problematic given the latent nature of radiation exposure, the effects of which could take years to appear.¹¹⁹

Furthermore, the balance of power between the AEC and Navajo was asymmetric, with the AEC wielding significant coercive power over the Navajo Nation, which was designated as a reservation and forced by the federal government into some degree of dependence.¹²⁰ One example of this dependence played out in the financing of roads on Navajo lands. In seeking funding for road construction throughout its lands, the Navajo found that the federal government was all too “eager[]” to build roads where the need from industry was great but not otherwise—in fact, the government was actively reluctant to build roads on Navajo lands if it was not connected to industry.¹²¹ Professor Traci Voyles further characterizes the mining and milling labor that the Navajo supplied as a “forced choice” in many ways.¹²² She explains that, given

Q[uestion:] . . . [T]he Navajo Nation was not involved in any of that [exploration or purchasing] activity, whether it be pricing of the uranium, . . . milling the uranium, any of the processes and procedures . . . ? A[nswer:] No. It just set what they wanted as a royalty rate.

¹¹⁴ AMUNDSON, *supra* note 95, at 29.

¹¹⁵ *See id.* (describing these contracts as “favorable” to the companies).

¹¹⁶ VOYLES, *supra* note 1, at 83–84.

¹¹⁷ VOYLES, *supra* note 1, at 83–85 (explaining, for example, that the AEC commonly negotiated contract terms that provided the “lowest possible cost” to industry and lowest royalty amounts to the Navajo, all of which the AEC framed as a benefit to the Navajo).

¹¹⁸ Brigham Testimony, *supra* note 113, at *49.

¹¹⁹ Dawson & Madsen, *supra* note 15, at 128 (reporting latency periods of between nineteen and twenty-five years).

¹²⁰ VOYLES, *supra* note 1, at 84, 114–15; *see also* EICHSTAEDT, *supra* note 24, at 37–38 (explaining that the Navajo leadership understood the uranium activities to be economically beneficial at the time, but this understanding was without the wider context of the associated health risks).

¹²¹ *See* VOYLES, *supra* note 1, at 105–06.

¹²² *Id.* at 114–15.

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the federal government's insistence on uranium expansion and the limited nature of other job opportunities on Navajo lands, many Navajo workers were essentially coerced by the AEC and BIA into working in uranium mines and mills when no other opportunities were available.¹²³ Speaking of the economic pressure, Navajo miner Tommy James said, "[T]o say I wish I did not work is impossible . . . it is money that is used to get what is needed, such as food and clothing. Because of these needs, even though it may be dangerous, you will go there to work. That is how it is."¹²⁴ The AEC itself even recognized this power imbalance in a 1951 statement regarding tribal lands when it confirmed, "We have, undoubtedly, had some influence on the establishment of regulations and procedures for the operation of uranium mineral lands."¹²⁵

In a sense then, here, the narrative spun by the *Exxon* court regarding the oil refineries—that the federal government was merely a "very interested customer" engaging in contracts that lacked an element of coercion¹²⁶—seems less apt. Instead, it seems more plausible that the government certainly imposed a level of coercion on the Navajo and uranium mining contracts, or at least the government did not enter into contracts that were completely "voluntary" and "consensual" as the *Exxon* court found.¹²⁷

Taken together, the U.S. government's general profit-setting control over the uranium market and its specific coercive management over Navajo contracts suggest that the U.S. government almost certainly satisfies the operator standard with regard to uranium mining between 1948 and 1970. The government's maximum-production campaign on both fronts clearly would have led to foreseeable increases in hazardous waste at mining facilities—which the government knew contaminated people and lands, as discussed in Part I *supra*. As a result, even if a court disagrees that the U.S. government is liable as an owner, the facts supporting operator liability are quite strong and support an independent finding of liability.

III. PRACTICAL CONSIDERATIONS [OMITTED]

CONCLUSION [OMITTED]

¹²³ *Id.*¹²⁴ Phil Harrison, "It Was Like Slave Work": Oral History of Minor Tommy James, in *THE NAVAJO PEOPLE AND URANIUM MINING* 117, 123–25 (Doug Brugge, Timothy Benally & Esther Yazzie-Lewis eds., Esther Yazzie-Lewis & Timothy Benally trans., 2006).¹²⁵ VOYLES, *supra* note 1, at 84 (quoting Frank MacPherson, *Relations Between the Navajo Indian Tribe-Area Office of the Navajo Indian Reservation, and the U.S. Atomic Energy Commission*, NARMR 434-99-208, "Program Correspondence," Box 3 (Nov. 13, 1951)).¹²⁶ *Exxon*, 108 F. Supp. 3d at 523.¹²⁷ *Id.*

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Date of JD/LLB	May 20, 2024
Class Rank	15%
Law Review/Journal	Yes
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Moot Court Experience	Yes
Moot Court Name(s)	William & Mary Law School Moot Court Team

Bar Admission

Prior Judicial Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at William & Mary Law School seeking a judicial clerkship in your chambers for the 2024-2025 term. I am ranked in the top 12 percent of my class, serve as an Articles Editor for the *William & Mary Environmental Law and Policy Review*, and have won three individual awards as a member of the nationally ranked William & Mary Moot Court Team. I wish to clerk in your chambers because I plan to practice litigation in Virginia after law school.

My extracurricular experiences have prepared me to serve as a judicial clerk. As an Articles Editor for the *William & Mary Environmental Law and Policy Review*, I manage a team of cite-checkers and coordinate with other editors to perform substantial edits of scholarly articles and guide the overall publication process. My responsibilities include conducting an in-depth evaluation of every citation and its source in each assigned article. As a member of the William & Mary Moot Court Team, I have written several appellate briefs on constitutional and criminal law topics. My team's brief on college professors' First Amendment rights ranked in the top five at the American Bar Association's (ABA) regional moot court tournament last spring. I ranked among the top ten oral advocates at the ABA national moot court tournament.

I worked as an intern for the Chesapeake City Attorney's Office during the summer of 2022, where I drafted memoranda on 42 U.S.C. § 1983, the City's stormwater drainage system, and the qualifications of an expert witness in a case involving the removal of coal ash landfills from Chesapeake. I also drafted a bench brief on Virginia's agritourism laws that required me to survey a relatively unexamined area of state law, compare it to similar laws of other jurisdictions, and create an argument based on my research.

I am sharpening my research and writing skills as an intern at the Southern Environmental Law Center in Charlottesville this summer and have drafted several briefs and memos on environmental topics. In the fall, I will write state and federal appellate briefs as a member of the William & Mary Appellate & Supreme Court Clinic.

Enclosed for your consideration are my resume, law school transcript, letters of recommendation and writing sample. I would be grateful for the opportunity to interview and further discuss my qualifications for a judicial clerkship in your chambers.

Sincerely,

Jim Davidson

JIM DAVIDSON

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EDUCATION

William & Mary Law School, Williamsburg, Virginia

J.D. expected, May 2024

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Honors:

William & Mary Appellate & Supreme Court Clinic

William & Mary Moot Court Team, William B. Spong, Jr. Tournament Justice

2023 American Bar Association NAAC National Tournament Finalist, Top 10 Best Advocate

2023 American Bar Association NAAC Regional Tournament Champion, Top 5 Briefs

2022 William & Mary Intrateam Tournament Best Oralist Award

2022 Moot Court Bushrod Tournament Champion

William & Mary Environmental Law & Policy Review, Articles Editor

Penn State University, Schreyer Honors College, State College, Pennsylvania

B.A., *magna cum laude*, English and History (double major), Spanish (minor), May 2020

G.P.A.: 3.96

Honors:

Phillip Klass Internship Award (Penn State English Department)

Thesis: *"Pamela" in Context: Commentary on Economics, the State of the Anglican Clergy, and Mental Illness*

PUBLICATIONS

Jim Davidson, Student Note, *Preparing for the Flood: Virginia Local Governments' Stormwater Management Liability*, 48 WM. & MARY ENV'T. L. POL'Y REV. (forthcoming 2023-2024).

EXPERIENCE

Southern Environmental Law Center, Charlottesville, Virginia

May to August 2023

Legal Intern: Working with attorneys addressing cases and policy issues concerning the environment.

Virginia Coastal Policy Center, Williamsburg, Virginia

January 2022 to Present

Legal Research Assistant: With a team of undergraduates, drafted a coastal resiliency certificate program for William & Mary students. Edited student white papers on septic regulation in Virginia and no-discharge zones.

Chesapeake City Attorney's Office, Chesapeake, Virginia

May to August 2022

Legal Intern: Wrote legal memoranda and brief drafts on 42 U.S.C. § 1983, expert witness testimony, zoning violations, agritourism, admiralty law, coal ash landfills, and water rights.

World Travel, Inc., Exton, Pennsylvania

June 2019 to August 2021

Inside Sales Coordinator and Marketing Specialist: Wrote company-wide and client-focused emails and statements for executives. Provided support for global sales managers. Managed social media accounts and rebranded the company's vacation travel divisions. Added more than 100 followers in less than four months.

Penn State University English Department, State College, Pennsylvania

September 2018 to May 2020

Research Assistant to Dr. Carla Mulford: Examined the rhetorical impact of Benjamin Franklin's scientific publications overseas. Evaluated primary sources from the early modern period. Searched eighteenth-century publications for references to Franklin's research. Translated Spanish sources into English.

Onward State, State College, Pennsylvania

February 2017 to May 2020

Senior Editor: Wrote longform posts on historical and contemporary topics (303 stories in total). Posted on social media channels to more than 150,000 followers. Edited features and news articles nightly. Reviewed local restaurants and films. Covered breaking news, State College Borough Council, and local legal issues.



Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

Transcript Data	
STUDENT INFORMATION	
Name :	James E. Davidson
Curriculum Information	
Current Program	
Juris Doctor	
College:	School of Law
Major and Department:	Law, Law
***Transcript type:WEB is NOT Official ***	
DEGREES AWARDED	
Sought: Juris Doctor	Degree Date:
Curriculum Information	
Primary Degree	

PAGE 2 OF 4

College:	School of Law					
Major:	Law					
	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Institution:	13.000	13.000	13.000	11.000	39.50	3.59

INSTITUTION CREDIT [-Top-](#)
Term: Fall 2021

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R		
LAW	101	LW	Criminal Law	A	4.000	16.00			
LAW	102	LW	Civil Procedure	B	4.000	12.00			
LAW	107	LW	Torts	B+	4.000	13.20			
LAW	130	LW	Legal Research & Writing I	B+	2.000	6.60			
LAW	131	LW	Lawyering Skills I	H	1.000	0.00			
				Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:				15.000	15.000	15.000	14.000	47.80	3.41
Cumulative:				15.000	15.000	15.000	14.000	47.80	3.41

Unofficial Transcript

Term: Spring 2022

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	108	LW	Property	A-	4.000	14.80	
LAW	109	LW	Constitutional Law	A-	4.000	14.80	
LAW	110	LW	Contracts	A-	4.000	14.80	
LAW	132	LW	Legal Research & Writing II	A-	2.000	7.40	
LAW	133	LW	Lawyering Skills II	H	2.000	0.00	

PAGE 3 OF 4

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	14.000	51.80	3.70
Cumulative:	31.000	31.000	31.000	28.000	99.60	3.55

Unofficial Transcript

Term: Fall 2022

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility	B+	2.000	6.60	
LAW	339	LW	Natural Resources Law	A	3.000	12.00	
LAW	401	LW	Crim Proc I (Investigation)	A-	3.000	11.10	
LAW	593	LW	Disaster Law & Ldrship Seminar	A-	3.000	11.10	
LAW	730	LW	Advanced Brief Writing	A-	2.000	7.40	
LAW	762	LW	W&M Environ Law/Policy Review	P	1.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	13.000	48.20	3.70
Cumulative:	45.000	45.000	45.000	41.000	147.80	3.60

Unofficial Transcript

Term: Spring 2023

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	309	LW	Evidence	A-	3.000	11.10	
LAW	412	LW	Legis/Statutory Interpretation	A-	3.000	11.10	
LAW	424	LW	Environmental Law	A-	2.000	7.40	
LAW	477	LW	Section 1983 Litigation	B+	3.000	9.90	
LAW	709	LW	Moot Court ILR	H	1.000	0.00	
LAW	762	LW	W&M Environ Law/Policy Review	P	1.000	0.00	

PAGE 4 OF 4

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	11.000	39.50	3.59
Cumulative:	58.000	58.000	58.000	52.000	187.30	3.60

Unofficial Transcript

TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) [-Top-](#)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	58.000	58.000	58.000	52.000	187.30	3.60
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	58.000	58.000	58.000	52.000	187.30	3.60

Unofficial Transcript

COURSES IN PROGRESS [-Top-](#)**Term: Fall 2023**

Subject	Course	Level	Title	Credit Hours
LAW	305	LW	Trust and Estates	3.000
LAW	400	LW	First Amend-Free Speech & Pres	3.000
LAW	482	LW	The Clean Water Act	2.000
LAW	762	LW	W&M Environ Law/Policy STAFF	2.000
LAW	788	LW	Appellate & Supr Ct Clinic I	3.000

Undergraduate Official Transcript

Name: James Davidson
Student ID: 964313318

Print Date: 01/13/2022

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	4.000	Cum Totals	15.000	15.000	15.000	60.000
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	4.000	Comb Totals	46.000	46.000	15.000	60.000

Term Honor: Dean's List

James Davidson

		Spring 2017				
Program:		Div of Undergraduate Studies				
Plan:		Division of Undergraduate Studies (PMAJ) Pre-Major				
Course		Description	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
ECON	102	Microec Anly	3.000	3.000	A-	11.010
ENGL	138	Rcl II	3.000	3.000	A	12.000
Course Attributes:		First-Year Seminar				
Course Attributes:		Honors				
PHIL	3	Persons/Value/Life	3.000	3.000	A	12.000
PSYCH	100	Intro Psychology	3.000	3.000	A	12.000
Course Attributes:		Honors				
SPAN	200	Inten Gram Comp	3.000	3.000	A	12.000
STAT	200	Elem Statistics	4.000	4.000	A	16.000

Degrees Awarded

Degree: Bachelor of Arts
Confer Date: 05/09/2020
Degree Honors: Magna Cum Laude
Plan: History (BA)
Plan: Spanish (UMNR)
Degree: Bachelor of Arts
Confer Date: 05/09/2020
Degree Honors: Magna Cum Laude
Plan: English (BA)

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	3.950	Term Totals	19.000	19.000	19.000	75.010
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.950	Comb Totals	19.000	19.000	19.000	75.010
			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.970	Cum Totals	34.000	34.000	34.000	135.010
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	3.970	Comb Totals	65.000	65.000	34.000	135.010

Term Honor: Dean's List

Beginning of Undergraduate Record

		Fall 2016				
Program:		Div of Undergraduate Studies				
Plan:		Division of Undergraduate Studies (PMAJ) Pre-Major				
Course		Description	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
ENGL	50	Intr Creative Writ	3.000	3.000	A	12.000
ENGL	137	Rcl I	3.000	3.000	A	12.000
Course Attributes:		Honors				
HIST	101	Roman	3.000	3.000	A	12.000
Course Attributes:		Repub&Empire				
Course Attributes:		Honors				
PLSC	1	Intr to Am Nat Gov	3.000	3.000	A	12.000
SPAN	100	Intermed Gram Comp	3.000	3.000	A	12.000
			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000	Term Totals	15.000	15.000	15.000	60.000
Transfer Term GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined GPA	4.000	Comb Totals	46.000	46.000	15.000	60.000

		Fall 2017				
Program:		Div of Undergraduate Studies				
Plan:		Division of Undergraduate Studies (PMAJ) Pre-Major				
Course		Description	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
GEOSC	40	The Sea Around Us	3.000	3.000	A	12.000
HIST	151	Tech in Am Hist	3.000	3.000	A-	11.010
Course Attributes:		Honors				
HIST	447	Recent Am Hist	3.000	3.000	A	12.000
PHIL	113	Intro Phil Lit	3.000	3.000	A	12.000
SPAN	253	Intro to Hisp Lit	3.000	3.000	A-	11.010
Course Attributes:		Writing Across the Curriculum				
			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	3.870	Term Totals	15.000	15.000	15.000	58.020
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.870	Comb Totals	15.000	15.000	15.000	58.020

Undergraduate Official Transcript

Name: James Davidson

Student ID: 964313318

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.940	Cum Totals	49.000	49.000	49.000	193.030
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	3.940	Comb Totals	80.000	80.000	49.000	193.030

Term Honor: Dean's List

Program: Div of Undergraduate Studies
 Plan: Division of Undergraduate Studies (PMAJ) Pre-Major

Course	Description	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
ENGL 200H	Intro Crit Read	3.000	3.000	A	12.000
Course Attributes:	Honors				
ENGL 231	Amer Lit to 1865	3.000	3.000	A	12.000
HIST 302	Undergrad Seminar	3.000	3.000	A	12.000
Course Attributes:	Writing Across the Curriculum				
HIST 473	Contemp Mideast	3.000	3.000	A	12.000
SPAN 410	Adv Oral Expres	3.000	3.000	A	12.000

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000	Term Totals	15.000	15.000	15.000	60.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	4.000	Comb Totals	15.000	15.000	15.000	60.000

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.950	Cum Totals	64.000	64.000	64.000	253.030
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	3.950	Comb Totals	95.000	95.000	64.000	253.030

Term Honor: Dean's List

Program: Liberal Arts
 Plan: History (BA) Major
 Plan: Spanish (UMNR) Minor

Course	Description	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
ENGL 433	Amer Novel 1900-45	3.000	3.000	A	12.000
Req Designation:	Honors				
HIST 144	World At War	3.000	3.000	A	12.000
HIST 420	Recent Eur Hist	3.000	3.000	A	12.000
Course Attributes:	Honors				
LA 495	Field or Practicum	3.000	3.000	A	12.000
SPAN 355	Lat Am Culture	3.000	3.000	A-	11.010

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	3.930	Term Totals	15.000	15.000	15.000	59.010
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.930	Comb Totals	15.000	15.000	15.000	59.010

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.950	Cum Totals	79.000	79.000	79.000	312.040
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	3.950	Comb Totals	110.000	110.000	79.000	312.040

Term Honor: Dean's List

Program: Liberal Arts
 Plan: History (BA) Major
 Plan: Spanish (UMNR) Minor

Course	Description	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
ENGL 415	Adv Nonfict Writg	3.000	3.000	A	12.000
ENGL 444	Shakespeare	3.000	3.000	A	12.000
ENGL 448	Engl Nov to Austen	3.000	3.000	A	12.000
Req Designation:	Honors				
LA 495	Field or Practicum	3.000	3.000	A	12.000
SPAN 479	Us Latin@	3.000	3.000	A	12.000
Req Designation:	Honors				

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000	Term Totals	15.000	15.000	15.000	60.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	4.000	Comb Totals	15.000	15.000	15.000	60.000

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.960	Cum Totals	94.000	94.000	94.000	372.040
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	3.960	Comb Totals	125.000	125.000	94.000	372.040

Term Honor: Dean's List

Program: Liberal Arts
 Plan: History (BA) Major
 Plan: Spanish (UMNR) Minor

Course	Description	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
ASTRO 1	Astro Universe	3.000	3.000	A-	11.010
EGEE 101	Energy and Envirmnt	0.000	0.000	LD	0.000
ENGL 597	Special Topics	3.000	3.000	A	12.000
Course Topic:	Eighteenth Century Fiction				
ENT 202	Insect Connection	3.000	3.000	A	12.000
HIST 494	Research Project	3.000	3.000	A	12.000

Undergraduate Official Transcript

Name: James Davidson

Student ID: 964313318

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	3.920	Term Totals	12.000	12.000	12.000	47.010
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	3.920	Comb Totals	12.000	12.000	12.000	47.010

Interdisciplinary Honors in English and History

Status: Completed

Program: Liberal Arts

Milestone Title: Interdisciplinary Honors in English and History

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.950	Cum Totals	106.000	106.000	106.000	419.050
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	3.950	Comb Totals	137.000	137.000	106.000	419.050

Test Credits

FA 2016

Term Honor: Dean's List

Term Honor: Dean's List						<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>	
Program: Plan: Plan: Program: Plan:	Liberal Arts History (BA) Major Spanish (UMNR) Minor Liberal Arts English (BA) Major	Spring 2020				ENGL	1	Understanding Lit	3,000	3,000	TR	0,000
						HIST	2	West Heritage II	3,000	3,000	TR	0,000
						HIST	20	Amer Civ to 1877	3,000	3,000	TR	0,000
						HIST	21	Amer Civ From 1877	3,000	3,000	TR	0,000
						MATH	140	Calc Anly Geom I	4,000	4,000	TR	0,000
						SPAN	1	Elem Spanish I	4,000	4,000	TR	0,000
						SPAN	2	Elem Spanish II	4,000	4,000	TR	0,000
						SPAN	3	Intmd Spanish	4,000	4,000	TR	0,000
						SPAN	100	Intermed Gram Comp	3,000	3,000	TR	0,000
<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>							
ENGL 487	Senior Seminar	3,000	3,000	A	12,000							
Course Attributes:	Writing Across the Curriculum											
ENGL 496	Indep Studies	3,000	3,000	A	12,000							
GEOSC 10	National Park Geol	3,000	3,000	A	12,000	Test Trans GPA:	0,000	Transfer Totals:	31,000	31,000	0,000	
HIST 475Y	Modern India	3,000	3,000	A	12,000							
Course Attributes:	Writing Across the Curriculum											
HIST 494H	Research Project	3,000	3,000	A	12,000							
Course Attributes:	Honors											
NUTR 100	NUTR APP HEALTH	3,000	3,000	A	12,000							
End of Undergraduate Official Transcript												

Test Trans GPA: 0.000 Transfer Totals: 31.000 31.000 0.000

End of Undergraduate Official Transcript

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000	Term Totals	18.000	18.000	18.000	72.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined GPA	4.000	Comb Totals	18.000	18.000	18.000	72.000

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.960	Cum Totals	124.000	124.000	124.000	491.050
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	3.960	Comb Totals	155.000	155.000	124.000	491.050

Term Honor: Dean's List

Undergraduate Career Totals

Cum GPA:	3.960	Cum Totals	124.000	124.000	124.000	491.050
Transfer Cum GPA		Transfer Totals	31.000	31.000	0.000	0.000
Combined Cum GPA	3.960	Comb Totals	155.000	155.000	124.000	491.050

Non-Course Milestones

Schreyer Honors College

Status: Completed

Program: Liberal Arts

Milestone Title: Schreyer Honors College

William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795

Lindsay Barna
Adjunct Professor, Legal Research & Writing
ldbarna@wm.edu
Phone: 757-221-1855

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Recommendation of Jim Davidson for Judicial Clerkship

Dear Judge Walker:

I am writing to recommend Jim Davidson for a Judicial Clerkship. Mr. Davidson is a highly capable and bright student. He was one of my writing students during the 2021-2022 academic year. He is not only a good student but would be a great addition to any office.

Mr. Davidson's written work is thoughtful and clear. He is able to analyze and express complex legal issues easily. During his first year of law school, he did very well in my Legal Writing & Research classes. During the first semester, he mastered the basic legal writing concepts and legal analysis quickly and was able to produce a legal memo which included three nuanced legal issues. He went on in the second semester to refine these skills and apply them to persuasive writing, where he crafted a written legal brief on a number of complex legal issues for his final assignment. During the second semester, he also had the responsibility of conducting all of his own research, which he managed easily. He was able to locate sources that were, by the design of the assignment, difficult to find. Mr. Davidson has all of the skills necessary to fulfill all of the duties of a Judicial Clerkship.

While Mr. Davidson has strong skills as a student, he also works well with others and would be an asset to any office. I observed him working with many of his classmates throughout his first year of law school. He was always an active and productive member of any group assignment but allowed room for others to voice their opinions. He emerged as a leader within his law school writing section and was a student that could be counted on to follow through on any number of complex projects.

Mr. Davidson is well qualified for a Judicial Clerkship position. His writing and research skills are excellent, but he is also conscientious, responsible, and works well with others. I recommend Mr. Davidson for a Judicial Clerkship position. Please contact me if you have any questions or would like to discuss Mr. Davidson in more detail.

Sincerely,

/s/

Lindsay Barna
Adjunct Professor
Legal Research & Writing
William & Mary Law School
ldbarna@wm.edu

Lindsay Barna - ldbarna@wm.edu - 757-221-1855

William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795

Steven E. Miskinis
Professor of the Practice of Law

Phone: 757-221-3279
Email: semiskinis@wm.edu

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Recommendation Letter for Jim Davidson

Dear Judge Walker:

I respectfully write to recommend Jim Davidson for a clerkship in your chambers. Mr. Davidson is a second-year law student attending William and Mary Law who is among the top students of his class. He earned an A in my Natural Resources Law class last semester where he presented himself as smart, mature, and personable. I believe he has the legal talents combined with the necessary professionalism to be a valued asset to your chambers. Accordingly, I hope you will consider his application seriously.

As a student, Mr. Davidson is consistently well-prepared and his comments in class reflect a thoughtfulness about the material that shows he is doing more than just memorizing legal principles. That he will get the law, and get it right, goes without saying. But he brings an alertness to the social and policy implications of how a legal rule may apply in changing factual and social circumstances. I appreciated both his willingness to take on the difficult questions I tried to pose in class as much as I appreciated his ability to accept and understand contrary viewpoints of other people in the room.

Mr. Davidson's exam was well-written, showing that he can translate complicated legal concepts and argument into clear prose. His writing skills are also attested by his position as an editor for the William & Mary Environmental Law & Policy Review. Moreover, he is a gifted oral advocate. He is both the 2022 Moot Court Bushrod Tournament Champion and winner of the 2022 William and Mary Intrateam Tournament Best Oralist Award. In short, Mr. Davidson has the lawyering skills necessary to produce the kind of high-quality work product expected of a federal court clerk.

I recommend Mr. Davidson from the standpoint of a Professor of the Practice. I practiced for two decades as an attorney at the Department of Justice and understand the need to produce consistently high-quality work under the pressure of multiple deadlines and other responsibilities. Mr. Davidson has the skills and professionalism to be an asset to your chambers. And he has the personality to both take direction and keep a pleasant demeanor in the close quarters of chambers. I hope you will consider his candidacy seriously. Please do not hesitate to reach out to me if there is anything further, I can provide you on his behalf.

I can be reached by email at smiskinis@wm.edu or by phone at 202-940-5926.

Respectfully,

/s/

Steve Miskinis
Professor of the Practice
William & Mary Law School

Steven Miskinis - semiskinis@wm.edu

Elizabeth Armistead Andrews
Professor of the Practice of Law
and Director, Virginia Coastal Policy Center

William & Mary Law School
Virginia Coastal Policy Center
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-1078
Email: eaandrews@wm.edu

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Recommendation for Jim Davidson

Dear Judge Walker:

I am writing to recommend one of my student Research Assistants, Jim Davidson, for your clerkship position.

Jim has done an excellent job working on various projects for me. He worked very well with a team of students to organize and conduct research on university certificate programs and draft a report with recommendations for developing a coastal resiliency certificate program. He also assisted me with finalizing a white paper on septic challenges in the face of increasing flooding and policy recommendations for addressing those challenges in Virginia. Jim was of immense help with that important project that will be shared with state agencies and other stakeholders. He researched some quite technical issues and did an exceptional job conveying them in an easy-to-understand form for use by non-scientists.

In addition to his excellent writing skills, Jim has exceptional organizational skills and the ability to work independently. He meets weekly with me, my staff, and the other Research Assistants to discuss projects, and then works on his own to complete his assigned tasks in a timely fashion. His maturity is reflected in his composure and confidence as he works on the projects that I have assigned to him. I believe that his experience and abilities, as well as his affable nature, would serve him well as a Clerk for you. I am confident that he would do an excellent job and highly recommend him to you.

Please let me know if I may be of further assistance.

Sincerely,

/s/

Elizabeth Armistead Andrews, Director

Elizabeth Andrews - eaandrews@wm.edu - 757-221-1078

JIM DAVIDSON

706 S. Henry Street, Apt. 1 | Williamsburg, VA 23185
484-366-7223 | jedavidson@wm.edu

WRITING SAMPLE

The following document is part of my moot court team's American Bar Association National Appellate Advocacy Competition (NAAC) brief. The brief was ranked in the top five at the NAAC regional competition and helped my team reach the final of the NAAC national competition. I wrote the attached section of the brief alone. In the fictional fact pattern at issue, a public college professor (Smith) filed a First Amendment compelled speech claim against his employers (Westland Community College (WCC)). The professor alleged that the employers unlawfully compelled him to speak when they forced him to recite the school's land acknowledgement statement and community values verbatim while refusing to allow him to present his own views.

My team represented the professor in his appeal to the U.S. Supreme Court from the fictional Thirteenth Circuit. My section of the brief answers the following issue presented by the Court: Whether a public college's ability to compel an instructor to make in-class statements that endorse a viewpoint contrary to the instructor's own academic opinions is limited by the First Amendment. The selection below contains the entire first half of my argument and the introduction to the second half.

II. PUBLIC COLLEGES RETAIN LIMITED AUTHORITY TO REGULATE THE SPEECH OF THEIR INSTRUCTORS, AND COURTS SHOULD RELY ON THE *PICKERING* TEST TO DEFINE THIS LIMITED AUTHORITY.

This Court has long recognized that “compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, _____ U.S. _____; 138 S. Ct. 2448, 2463 (2018). When the government forces an individual to endorse orthodox views, it violates the one possible “fixed star in our constitutional constellation.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). WCC ignored the First Amendment’s robust protection against compelled speech and reached far beyond its constitutional authority when it forced Smith to include the Land Acknowledgement Statement and NSE bullet points in his syllabus and lectures without a disclaimer or other accommodation. R. at 10.

Smith did not speak for the government through his lectures in the classroom, yet he was required to endorse WCC’s statements as if they constituted Smith’s own personal beliefs. Therefore, the Court should find that a public college’s ability to compel the speech of its instructors is limited by the First Amendment. Because the WCC policy at issue affected a small group of professors and Smith spoke as a government employee on a matter of public concern, the Court should rely on the *Pickering* balancing test to determine the limits of a public college’s ability to compel the speech of its professors.

A. WCC’s Rationale For Compelling Smith’s In-Class Speech Fails Because The Speech At Issue Was Not Government Speech And Smith Was Required To Affirmatively Endorse WCC’s Statements As His Own Opinions.

Smith’s in-class speech to his students did not constitute government speech, and therefore WCC had limited control over the statements he made as an instructor. WCC argues that it may require Smith to convey the messages contained in its Land Acknowledgement

Statement and NSE community value bullet points because his speech as a professor was government speech. R. at 18. However, the historical and contextual understanding of the in-class speech of college professors and the relationship between *Garcetti* and the government-speech doctrine suggests that Smith’s statements did not constitute government speech. *See Garcetti*, 547 U.S. at 425; *Mayer*, 474 F.3d at 480. Additionally, WCC required Smith to relay statements in a way that indicated those statements constituted Smith’s personal beliefs, *see* R. at 10, reaching beyond its limited institutional ability to compel the speech of college professors, *see Barnette*, 319 U.S. at 637.

1. *Smith’s in-class speech did not constitute government speech because the Court in Garcetti declined to extend its course-of-duties rationale to the speech of college professors, and instructor speech in the college classroom has long been considered independent from government speech.*

Smith’s in-class speech to his students did not constitute government speech, and therefore WCC did not have complete control over the statements Smith made in the classroom. WCC argues that it may require Smith to convey the messages contained in its Land Acknowledgement Statement and NSE community value bullet points because his speech as a professor is government speech with the sole purpose of transmitting the college’s desired viewpoints. R. at 18. The Thirteenth Circuit agreed with this categorization, holding that, because a public college is not a viewpoint-neutral body, WCC was “permitted to insist that its employees carry out its program.” R. at 20.

Smith concedes that WCC may compel its professors to utter some “ministerial” speech, such as taking roll at the beginning of class. R. at 18. However, WCC’s actions reached beyond this basic authority. The Thirteenth Circuit’s opinion below and WCC’s argument untenably fuse the *Garcetti* doctrine with the government speech doctrine in a way that ignores *Garcetti*’s explicit refusal to wade into the world of post-secondary education, and the limited application

of the government speech doctrine to the college classroom. R. at 18; 547 U.S. at 425. In short, WCC claims that the government speech doctrine applies to *all* of Smith’s in-class speech because *Garcetti* removed speech pursuant to a public employee’s duties from any discussion of balancing government interest in smooth operation with an employee’s interest in speaking. R. at 20 (“[W]hen the issue is a government ordering an employee to perform core job duties, the *Pickering* test does not apply. There is no balancing. WCC was in the heart of its managerial discretion.”); *see* 547 U.S. at 426. Therefore, WCC argues, it may regulate every word of its post-secondary educators’ speech as speech that conveys whatever message the university wishes to mandate. R. at 20; *see Garcetti*, 547 U.S. at 425.

This is an erroneous application of the government speech doctrine to an area the Court never meant it to reach. The doctrine applies to situations in which the government explicitly speaks to “promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf,” *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 208 (2015), but it does not apply so neatly to cases that involve the intricate dynamics of a college classroom. Of course, if the government was forced to include opinions that opposed its position every time it spoke, “government would not work.” *Id.* To apply this blanket doctrine to higher education, however, is to miss the Court’s extensive efforts to create a separate niche in First Amendment doctrine for professorial speech. *See Garcetti*, 547 U.S. at 425.

The cases the Thirteenth Circuit cites in support of its application of the government-speech doctrine do not address this distinction. *Walker* discusses the government’s authority to deny an interest group’s application to commission a specialty license plate, with the Court holding that “Texas maintains control of the messages conveyed on its specialty plates.” 576

U.S. at 213. In *Agency for International Development v. Alliance for Open Society International, Inc.*, the Court held that the government could not condition its interest-group funding decision on the group's affirmation "of a belief that by its nature cannot be confined within the scope of the Government program." 570 U.S. 205, 221 (2013). Further, the Fifth Circuit found public school textbooks in *Chiras v. Miller* to be government speech immune from the neutrality requirement. 432 F.3d 606, 620 (5th Cir. 2005). The *Walker* Court specifically recognized that "government statements (and government actions and programs that take the form of speech) do not normally trigger the First Amendment rules designed to protect the marketplace of ideas." 576 U.S. at 207. WCC and the Thirteenth Circuit, however, brush past this crucial caveat and fail to see its connection to this Court's admonishment that "[t]he classroom is peculiarly the 'marketplace of ideas'" that the First Amendment is designed to protect. *Keyishian*, 385 U.S. at 603.

Nevertheless, WCC attempts to label Smith's instructional in-class speech as the direct speech of his employer, and therefore open to compulsion, using *Garcetti*. R. at 18. WCC's connection between *Garcetti* and the government-speech doctrine is unworkable because of *Garcetti*'s explicit refusal to apply its principal holding to the world of post-secondary academia. See 547 U.S. at 425. The State of Florida attempted a similar argument in defense of its recently passed Stop W.O.K.E. Act, which "officially bans professors from expressing disfavored viewpoints in university classrooms while permitting unfettered expression of the opposite viewpoints." *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, No. 22CV304, 2022 WL 16985720, at *1 (N.D. Fla. Nov. 17, 2022), *appeal filed*. Florida argued that a state may compel public university professors to remain silent on certain topics because *Garcetti* left unprotected a public employee's speech pursuant to their official duties. *Id.* at *7-*9; see

Garcetti, 547 U.S. at 425. However, as the district court noted in *Pernell*, the Court in *Garcetti* left the speech of college instructors outside the scope of its holding, and several lower courts have refused to extend *Garcetti* to the college classroom in a way that would allow administrators to compel student or instructor speech under the government-speech doctrine. *Pernell*, 2022 WL 16985720, at *7-*9; *Mayer*, 474 F.3d at 480 (“How much room is left for constitutional protection of scholarly viewpoints in post-secondary education was left open in *Garcetti* and *Piggee* and need not be resolved today.”); *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 343 (6th Cir. 2010) (“*Garcetti*’s caveat offers no refuge to Evans–Marshall. She is not a teacher at a ‘public college[]’ or ‘universit[y]’ and thus falls outside of the group the dissent wished to protect.”). Any attempt to connect the government-speech doctrine to statements made by a college professor via *Garcetti*, therefore, rests on a nonexistent application that this Court has directly refused to make.

In addition, WCC and the Thirteenth Circuit fail to recognize the nuanced difference between a public college’s prescription of its curriculum and its attempt to compel and restrict every utterance that touches on a topic contradictory to that curriculum in class. Of course, it is

the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail the four essential freedoms of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

Sweezy, 354 U.S. at 263 (Frankfurter, J., concurring) (internal quotation marks and citation omitted). However, this general allocation of duty does not extend to the point of policing classroom speech and excluding any competing viewpoints from entering classroom discussion. Even at the high school level, where the content of in-class instruction is more often regulated, this Court recognized that to criminally punish a teacher from expressing views that oppose the

curriculum goes too far. *Epperson v. Arkansas*, 393 U.S. 97, 115–16 (1968) (Stewart, J., concurring). As Justice Stewart noted in his concurring opinion in *Epperson*, a state might mandate that a single language be taught to students in its public schools, but it may not mandate that a teacher cannot teach *about* other languages. *Id.* (“But would a State be constitutionally free to punish a teacher for letting his students know that other languages are also spoken in the world? I think not.”).

Here, Smith was speaking as a college professor in the context of an academic discussion with his students, and in no way attempted to prevent the content of WCC’s required curriculum from reaching his students. R. at 10. Smith merely wished to express his disagreement with WCC’s Land Acknowledgement Statement and engage his class in a broader discussion of two NSE bullet points with which he disagreed. R. at 8, 10. To punish Smith for discussing viewpoints that oppose WCC’s curriculum is akin to punishing a teacher for “letting his students know that other languages are also spoken in the world.” *Epperson*, 393 U.S. at 115-16.

2. *WCC required Smith to convey the institution’s academic beliefs to students in a way that indicated Smith endorsed those opinions as his own.*

WCC compelled Smith to speak in violation of the First Amendment because it required him to convey the academic opinions of the college in a way that suggested he endorsed those opinions. WCC argues that even if the First Amendment imposes a limitation on what a public college may require its instructors to say, WCC did not supersede this limit because it did not require Smith to “affirmatively adopt WCC’s speech as his own.” R. at 21. An examination of the Court’s compelled speech precedent, however, indicates that Smith was forced to utter statements to his students that suggested an “affirmation of a belief and an attitude of mind” in a manner that violates the First Amendment. *Barnette*, 319 U.S. at 633.

This Court has long held that the Constitution’s protection against compelled speech is

paramount, and “involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence.” *Id.* WCC, however, argues that there is an invisible difference between the words one utters and the beliefs they espouse. R. at 21. This Court has made it clear, over the course of decades, that it disagrees, and that even expressive conducts, short of verbal speech, espouse beliefs and messages that may not be altered by government compulsion. *See, e.g., Barnette*, 319 U.S. at 642; *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 580-81 (1995).

For example, in *Barnette*, the Court held that schoolchildren could not be forced to salute the American flag and recite the pledge of allegiance each morning. *See* 319 U.S. at 642. It held that such a compulsory ritual, where individuals are required to recite state-prescribed statements, “invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.” *Id.* In *Hurley*, the Court similarly found that parade organizers, in marching to “make some sort of collective point,” could not be forced to alter that message by the government. 515 U.S. at 580-81. In discussing compulsion and First Amendment analysis, the Court has found speech in wearing a black armband in protest to high school, *Tinker*, 393 U.S. at 508-509, displaying a state slogan on a license plate, *Wooley v. Maynard*, 430 U.S. 705, 714 (1977), and the flying of a red flag, *Stromberg v. California*, 283 U.S. 359, 370 (1931).

Regardless of WCC’s control over Smith’s speech as an employee, it makes an unsupported distinction between speech uttered by an individual and that individual’s actual, internal beliefs. R. at 21. The Court’s precedential cases make clear that for the purposes of First Amendment analysis, there is no meaningful way to distinguish what an individual says from what they believe, and that the prohibition against compelled speech exists to validate

“individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.” *Barnette*, 319 U.S. at 637. If the government could justify its attempts to compel speech by claiming that it did not require the speaker to believe what he said, compelled speech would not create such serious concerns.

Here, Smith was affirmatively compelled to make the sort of statements that this Court warned against in *Hurley*, *Barnette*, and *Wooley*: government-endorsed sentences conveying a specific viewpoint that Smith did not wish to express. *See* R. at 10. In requiring Smith to relay these statements without disclaiming his own professional beliefs, WCC is effectively attempting to limit Smith’s speech, and thereby the beliefs he may hold and express. *See* R. at 10; *Barnette*, 319 U.S. at 637. If Smith cannot express his disagreement with these statements, he is effectively endorsing them under the Court’s compelled speech holdings, and WCC is hijacking his First Amendment right to decide what to express, what to endorse, and what to believe. *See* R. at 10; *Pac. Gas & Elec. Co. v. Pub. Utilities Comm’n of Cal.*, 475 U.S. 1, 11 (1986) (“[A]ll speech inherently involves choices of what to say and what to leave unsaid.”).

Additionally, WCC argues, and the Thirteenth Circuit affirms without support, that students will be able to distinguish between what Smith is required to relay and what he personally believes as an academic. R. at 21. However, this argument fails to recognize two important aspects of the speech at issue. First, both instances of compelled speech touch on topics that Smith has dedicated written work and other scholarship to understanding. R. at 5, 10. To suggest that this fact is meaningless, and that students will be able to separate Smith’s own convictions about his areas of study from those mandated by WCC, is to delegitimize the authority of college instructors and to ignore the “ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.” *Sweezy*, 354 U.S. at 262, (1957)

(Frankfurter, J., concurring). Smith, as a professor, chooses his words carefully, especially when they express his convictions on the topics he knows best. R. at 5, 10. To suggest that students can easily parse what Smith truly believes about important subjects from what he is forced to say is to ask them to read his mind or study the entirety of his scholarship, contextualizing each statement as either administrative or academic. And if students can tell that Smith does not believe in what he is saying, why would a disclaimer of his own beliefs affect the conveyance of WCC's community values? *See* R. at 10.

WCC is asking the Court to hold that Smith's speech can easily be distinguished from his academic beliefs but refusing to let Smith point out that distinction to his students in a simple disclaimer or broadened classroom discussion. *See* R. at 10. According to this Court's previous First Amendment holdings, compelled speech cannot be allowed on the basis of an imaginary dichotomy between speech and internal belief. *See Barnette*, 319 U.S. at 642; *Hurley*, 515 U.S. at 580-81. Therefore, WCC's attempt to compel Smith to endorse the college's views, on the basis that he does not have to believe the values he conveys to his students, violates the First Amendment.

B. The Court Should Apply The *Pickering* Test In Evaluating Smith's Compelled Speech Claim To Determine Whether WCC Reached Beyond Constitutional Limits To Compel Smith's Classroom Speech.

The Court should apply the two-prong *Pickering-Connick* (*Pickering*) test to analyze Smith's claim and determine whether WCC compelled Smith's speech in violation of the First Amendment. This Court and others have historically used the *Pickering* test to determine whether a public employee's speech is protected from government retaliation, restriction, or compulsion. *See Garcetti*, 547 U.S. at 417; *Nicholson v. Gant*, 816 F.2d 591, 599 (11th Cir. 1987) (using the *Pickering* test to evaluate a public employee's compelled speech claim).

As the Thirteenth Circuit recognized, this Court's recent decision in *Janus* muddled the

seemingly straightforward application of the *Pickering* test to public employees' compelled speech claims. R. at 19. In dicta, the Court explained that the *Pickering* test was inadequate in analyzing some compelled speech claims, specifically in a hypothetical modification of the facts of *Connick v. Myers*, 461 U.S. 138, 142 (1983), where an employee is compelled to speak publicly on a matter of private concern. *Janus*, 138 S. Ct. at 2473. Ultimately, the Court refrained from deciding whether *Pickering* "applies at all" to compelled speech and noted that *Pickering* was a "poor fit indeed" for the union speech claim at issue that addressed a law with widespread effect on thousands of employees. *Id.* at 2474. However, the Court went on to apply *Pickering* to the claim to determine whether the speech at issue addressed a matter of public concern. *Id.* at 2477-78.

Before *Janus*, courts generally applied *Pickering* to compelled speech claims. *See Nicholson*, 816 F.2d at 593, 599-600; *see also Gwinnett v. Sw. Fla. Reg'l. Plan. Council*, 407 F. Supp. 3d 1273, 1278 (M.D. Fla. 2019) (finding that "[b]efore *Janus*, courts applied *Pickering* to public employee compelled speech cases with little fanfare."). Although the Court ultimately used *Pickering* after criticizing its applicability, *Janus* left the question of whether to apply *Pickering* to future compelled speech claims unanswered. 138 S. Ct. at 2473.

Despite the reservations the Court expressed in *Janus*, *Pickering* remains an effective test for Smith's compelled speech claim and professors' compelled speech claims generally because the policy at issue does not have a widespread effect on numerous employees and Smith was compelled to speak on matters of public concern. R. at 9-10.

Applicant Details

First Name	Michael
Middle Initial	Cole
Last Name	Davidson
Citizenship Status	U. S. Citizen
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Address	<div> Address Street 15 1/2 South Jefferson Street, Apt 5 City Lexington State/Territory Virginia Zip 24450 Country United States </div>
Contact Phone Number	2766855127

Applicant Education

BA/BS From	University of Virginia
Date of BA/BS	May 2021
JD/LLB From	Washington and Lee University School of Law
	http://www.law.wlu.edu
Date of JD/LLB	May 15, 2024
Class Rank	10%
Law Review/Journal	Yes
Journal(s)	Washington and Lee Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
--------------------------------------	------------

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Woody, Karen
kwoody@wlu.edu
Macon, Carrie
CarrieM@vawd.uscourts.gov
Jones, Scott
ScottJ@vawd.uscourts.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

COLE DAVIDSON

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June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I write seeking an opportunity to serve in chambers as your term clerk for 2024 – 2025. I possess both the academic and professional qualifications necessary to succeed in this role. More importantly, I am deeply passionate about serving in this capacity, and I would be honored to aid in the administration of justice by serving as your clerk.

Professionally, I developed an excellent skill set for this role while serving under two brilliant federal judges – The Honorable James P. Jones and The Honorable Thomas T. Cullen – as a judicial intern. Both Judge Jones and Judge Cullen entrusted me with significant responsibilities in conducting research and drafting opinions on substantial matters with wide-ranging implications. During my 3L year, I will serve under The Honorable G. Steven Agee on the United States Court of Appeals for the Fourth Circuit. I look forward to the new perspective appellate jurisprudence offers, and I am confident I will acquire invaluable skills and insight under another excellent jurist.

Academically, I have the benefit of relevant experience. As a Staffwriter, and now Managing Online Editor, of the Washington and Lee Law Review, I have sharpened my legal writing, citation, and attention to detail. I have also become comfortable engaging with areas of the law previously unknown to me, a skill that I am confident will allow me to engage with difficult or abstract cases in chambers. Finally, I am currently co-authoring an article on insider trading, an endeavor which is making me a better writer and a more well-rounded student of the law.

More important than my achievements is my purpose in applying for this position. The federal judiciary is rife with brilliant, qualified, excellent lawyers, as well it should be. But it must also be filled with those conscious of the role they serve; those eager to aid in the fair application of the law. Here, I feel that I excel.

Judge Jones and Judge Cullen took pains to ensure that I understood the bigger picture: cases may be routine in chambers, but they are life-altering for those before us. Verdicts and rulings matter not only to those before the court, but to anyone similarly situated, now or in the future. Ordinary people interact with courts infrequently, so the court must afford them the impression and reality of a fair and considerate day in court. Most importantly, everyone responsible for preserving the institution of the law – from interns, to clerks, to judges – must do so with great care.

I am acutely aware of the role your chambers must play in administering the law, and I embrace it. I look forward to the opportunity to serve in the administration of justice, and I sincerely hope to do so as your term clerk.

Warmest regards,

Cole Davidson

COLE DAVIDSON

davidson.c24@law.wlu.edu | (276) 685-5127

EDUCATION

Washington and Lee University School of Law, Lexington, VA

Candidate for Juris Doctor, May 2024 (GPA 3.678, top 15%)

- *Washington and Lee Law Review*, Managing Online Editor
- Martin P. Burks Scholar: teach legal writing and citation to first-year students
- Recipient, John K. Boardman Jr. Law Scholarship

University of Virginia, Charlottesville, VA

Bachelor of Arts in History; Minor in Leadership and Public Policy, 2021

- GPA: 3.800; Dean's List 2 semesters; Graduated with Distinction
- Advocate, Judiciary Committee: managed cases, developed evidence, represented parties at trial

EXPERIENCE

United States Court of Appeals for the Fourth Circuit, Salem, VA

Judicial Extern, *Chambers of The Honorable G. Steven Agee*, August 2023 – May 2024

- Expect to draft memoranda to assist the court in resolving pending issues
- Expect to draft and review opinions for publication

McGuireWoods LLP, Charlotte, NC

Summer Associate, May 2023 – July 2023

- Research and draft memoranda, briefs, and corporate documents
- Attend depositions, trials, negotiations and appellate arguments

Washington and Lee University School of Law, Lexington, VA

Research Assistant to Professor Karen Woody, July 2022 – Present

- Analyze changes in corporate cooperation with federal criminal prosecutions
- Research and summarize the history of corporate cooperation
- Review and revise drafted work to prepare for publication

United States District Court for the Western District of Virginia, Roanoke & Abingdon, VA

Chambers Intern, May 2022 – August 2022

- Worked with Judge James P. Jones from May – June and Judge Thomas T. Cullen from July – August
- Researched legal issues to assist chambers staff in resolving matters before the court
- Drafted opinions on topics including protected speech retaliation and inmate rights

Nau Center for Civil War History, University of Virginia, Charlottesville, VA

Research Assistant, May 2020 – May 2021

- Researched Civil War regiments to determine end-of-war location and status
- Consolidated and reviewed over 15,000 data entries corresponding to paroled soldiers
- Collected information to create database for upcoming book on post-war history

SERVICE

Blue Ridge Legal Services, Lexington, VA

October 2021 – Present

- Screened prospective clients and summarized issues for review by staff attorneys

Students for Equity and Reform in Virginia, Charlottesville, VA

December 2020 – May 2021

- Researched and lobbied for human trafficking prevention legislation

INTERESTS

- Baseball sabermetrics, cooking, Cold War history, snowboarding, skeet shooting

Print Date: 05/30/2023

Page: 1 of 2

Student: Michael Cole Davidson

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-1365

Entry Date: 08/30/2021

Date of Birth: 11/16/XXXX

Academic Level: Law

2021-2022 Law Fall

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	A	4.00	4.00	16.00	
LAW 140	CONTRACTS	A	4.00	4.00	16.00	
LAW 163	LEGAL RESEARCH	A-	0.50	0.50	1.84	
LAW 165	LEGAL WRITING I	A-	2.00	2.00	7.34	
LAW 190	TORTS	A	4.00	4.00	16.00	

Term GPA: 3.943

Totals:

14.50

14.50

57.18

Cumulative GPA: 3.943

Totals:

14.50

14.50

57.18

2021-2022 Law Spring

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	B+	4.00	4.00	13.32	
LAW 150	CRIMINAL LAW	A	3.00	3.00	12.00	
LAW 163	LEGAL RESEARCH	A-	0.50	0.50	1.84	
LAW 166	LEGAL WRITING II	A-	2.00	2.00	7.34	
LAW 179	PROPERTY	B+	4.00	4.00	13.32	
LAW 195	TRANSNATIONAL LAW	A-	3.00	3.00	11.01	

Term GPA: 3.565

Totals:

16.50

16.50

58.83

Cumulative GPA: 3.741

Totals:

31.00

31.00

116.00

2022-2023 Law Fall

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 618	Insider Trading Seminar	A-	2.00	2.00	7.34	
LAW 685	Evidence	A-	3.00	3.00	11.01	
LAW 716	Business Associations	A-	4.00	4.00	14.68	
LAW 771	National Security Law and Practice	B+	2.00	2.00	6.66	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

Term GPA: 3.608

Totals:

13.00

13.00

39.69

Cumulative GPA: 3.706

Totals:

44.00

44.00

155.69

Print Date: 05/30/2023

Page: 2 of 2

Student: Michael Cole Davidson

WASHINGTON AND LEE
UNIVERSITY
Lexington, Virginia 24450-2116

**2022-2023 Law Spring**

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A-	3.00	3.00	11.01	
LAW 701	Administrative Law	A-	3.00	3.00	11.01	
LAW 710	Securities Regulation	B+	3.00	3.00	9.99	
LAW 793	Federal Income Tax of Individuals	B+	3.00	3.00	9.99	
LAW 828	Trial Advocacy Practicum	A	3.00	3.00	12.00	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	
Term GPA: 3.600			Totals:	17.00	17.00	54.00
Cumulative GPA: 3.678			Totals:	61.00	61.00	209.69

2023-2024 Law Fall

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 707B	Skills Immersion: Business		2.00	0.00	0.00	
LAW 739	Federal White Collar Crime		3.00	0.00	0.00	
LAW 746	Cannabis Law		3.00	0.00	0.00	
LAW 801	Higher Education Practicum		4.00	0.00	0.00	
LAW 910	Law Review: 3L		1.00	0.00	0.00	
LAW 934	Federal Judicial Externship		2.00	0.00	0.00	
LAW 934FP	Federal Judicial Externship: Field Placement		2.00	0.00	0.00	
Term GPA: 0.000			Totals:	17.00	0.00	0.00
Cumulative GPA: 3.678			Totals:	61.00	61.00	209.69

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	61.00	61.00	3.678
External:	0.00	0.00	
Overall:	61.00	61.00	3.678

Program: Law

End of Official Transcript

Michael Cole Davidson

07/10/2022

Degrees Conferred

Confer Date: 05/23/2021
Degree: Bachelor of Arts
Degree Honors: with Distinction
Major: History
Minor: Leadership and Public Policy

Test Credits

Test Credits Applied Toward Arts & Sciences Undergraduate

Transferred to Term 2017 Fall as			
ENWR	1000T	Non-UVa Transfer/Test Credit	TE 3.00
MATH	1310	Calculus I	TE 4.00
Repeated:		Repeat-Include in GPA Only	
MATH	1320	Calculus II	TE 4.00
Repeated:		Repeat-Include in GPA Only	
Test Credit Total:			3.00

Transfer Credits

Transfer Credit from Wytheville Community College
Applied Toward Arts & Sciences Undergraduate Program

Incoming Course			
PSY	200	Principles of Psychology	
Transferred to Term 2017 Fall as			
PSYC	1010	Introductory Psychology	PT 3.00
Incoming Course			
PLS DE	212	U.S. Govt II Dual Enrollment	
Transferred to Term 2017 Fall as			
PLAP	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
PLS DE	211	U.S. Govt I Dual Enrollment	
Transferred to Term 2017 Fall as			
PLAP	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
PED	111	Weight Training I	
Transferred to Term 2017 Fall as			
KINE	1000T	Non-UVa Transfer/Test Credit	PT 1.00
Incoming Course			
MTH	272	Applied Calculus II	
Transferred to Term 2017 Fall as			
MATH	1220	A Survey of Calculus II	PT 3.00
Repeated: Repeat-Include in Credit Only			
Incoming Course			
MTH	271	Applied Calculus I	
Transferred to Term 2017 Fall as			
MATH	1210	A survey of Calculus I	PT 3.00
Repeated: Repeat-Include in Credit Only			
Incoming Course			
MTH	242	Statistics II	
Transferred to Term 2017 Fall as			
STAT	2120	Intro to Statistical Analysis	PT 3.00
Incoming Course			
MTH	241	Statistics I	
Transferred to Term 2017 Fall as			
STAT	1120	Introduction to Statistics	PT 3.00

Incoming Course			
ITE	115	Introduction to Computer Appli	
Transferred to Term 2017 Fall as			
CS	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
HUM	100	Survey of the Humanities	
Transferred to Term 2017 Fall as			
HUMS	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
HIS DE	122	US History II DE	
Transferred to Term 2017 Fall as			
HIST	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
HIS DE	121	US History I DE	
Transferred to Term 2017 Fall as			
HIST	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
ENG	242	Survey of American Lit II	
Transferred to Term 2017 Fall as			
ENGL	2000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
ENG	241	Survey of American Lit I	
Transferred to Term 2017 Fall as			
ENGL	2000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
ENG DE	112	Writing	
Transferred to Term 2017 Fall as			
ENWR	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
ENG DE	111	Writing	
Transferred to Term 2017 Fall as			
ENWR	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
CST	110	Introduction to Communication	
Transferred to Term 2017 Fall as			
ENSP	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
BUS	242	Business Law II	
Transferred to Term 2017 Fall as			
COMM	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
BUS	241	Business Law I	
Transferred to Term 2017 Fall as			
COMM	1000T	Non-UVa Transfer/Test Credit	PT 3.00
Incoming Course			
BIO	102	General Biology II	
Transferred to Term 2017 Fall as			
BIOL	2200	Intro Bio w/Lab: Orgnsm & Evol	PT 4.00
Incoming Course			
BIO	101	General Biology I	
Transferred to Term 2017 Fall as			
BIOL	2100	IntroBio w/Lab:Cell & Genetics	PT 4.00
Transfer Credit Total:			63.00

Michael Cole Davidson

07/10/2022

Beginning of Undergraduate Record

2017 Fall				
School:	College & Graduate Arts & Sci			
Major:	Arts & Sciences Undeclared			
ASTR 1210	Intro Sky and Solar System	B+	3.0	
EGMT 1520	Empirical Engagement	A	2.0	
Course Topic:	Knowledge You Can Trust			
EGMT 1540	Ethical Engagement	A	2.0	
Course Topic:	Knowledge You Can Trust			
ENWR 1510	Writing and Critical Inquiry	A	3.0	
Course Topic:	Writing about Culture/Society			
HIUS 1559	New Course: HIUS	A	3.0	
Course Topic:	Slavery and Its Legacies			
Curr Credits	13.0	Grd Pts	49.900	GPA 3.838
Cuml Credits	13.0	Grd Pts	49.900	GPA 3.838

Minor:	Leadership and Public Policy			
HIST 2214	The Cold War	CR	3.0	
HIUS 3161	Viewing AM, 1940-1980	CR	3.0	
LPPP 3230	Pub Policy Challenges, 21st C	CR	3.0	
LPPS 3240	Terrorism and Counterterrorism	A	3.0	
LPPS 3380	Poverty, Learning & Educ Policy	A	3.0	
Curr Credits	15.0	Grd Pts	24.000	GPA 4.000
Cuml Credits	84.0	Grd Pts	283.800	GPA 3.784

2020 Fall

School:	College & Graduate Arts & Sci			
Major:	History			
Minor:	Leadership and Public Policy			
HIEA 2031	Modern China	CR	3.0	
HIUS 4511	Colloquium: U.S. History	CR	4.0	
Course Topic:	Civil War in Myth and Memory			
LPPA 4240	Resrch Methods & Data Analysis	CR	3.0	
LPPP 3200	Introduction to Public Policy	CR	3.0	
Curr Credits	13.0	Grd Pts	0.000	GPA 0.000
Cuml Credits	97.0	Grd Pts	283.800	GPA 3.784

2018 Spring

School:	College & Graduate Arts & Sci			
Major:	Arts & Sciences Undeclared			
ASTR 1250	Alien Worlds	A-	3.0	
EGMT 1510	Aesthetic Engagement	A	2.0	
Course Topic:	Beauty & Math in the Cosmos			
EGMT 1530	Engaging Difference	A-	2.0	
Course Topic:	Debating Islams			
PHIL 1000	Introduction to Philosophy	A-	3.0	
PSYC 2700	Intro to Child Psychology	A	3.0	
Curr Credits	13.0	Grd Pts	49.600	GPA 3.815
Cuml Credits	26.0	Grd Pts	99.500	GPA 3.827

School:	College & Graduate Arts & Sci			
Major:	History			
Minor:	Leadership and Public Policy			
HIEU 3312	Europe at War, 1939-45	A+	3.0	
HIME 3192	The Ottoman Empire, 1300-1700	CR	3.0	
HIUS 3654	Black Fire	A	3.0	
INST 3600	'Unforgettable Lectures'	CR	1.0	
LPPS 3280	Lessons in Leadership: JFK	CR	3.0	
Curr Credits	13.0	Grd Pts	24.000	GPA 4.000
Cuml Credits	110.0	Grd Pts	307.800	GPA 3.800

2018 Fall

School:	College & Graduate Arts & Sci			
Major:	Arts & Sciences Undeclared			
COMM 3410	Commercial Law I	B+	3.0	
HIUS 3071	The Coming of the Civil War	A	3.0	
RELG 1040	Intro Eastern Religious Trads	A	3.0	
SPAN 1060	Accelerated Elementary Spanish	A-	4.0	
Curr Credits	13.0	Grd Pts	48.700	GPA 3.746
Cuml Credits	39.0	Grd Pts	148.200	GPA 3.800

2019 Spring

School:	College & Graduate Arts & Sci			
Major:	History			
ECON 2010	Principles of Econ: Microecon	A-	3.0	
HIEU 3152	History of the British Empire	A-	3.0	
HIST 3452	The Second World War	A-	3.0	
PSYC 2600	Intro to Social Psychology	A	3.0	
SPAN 2010	Intermediate Spanish	A-	3.0	
Curr Credits	15.0	Grd Pts	56.400	GPA 3.760
Cuml Credits	54.0	Grd Pts	204.600	GPA 3.789
Honor:	Dean's List			

2019 Fall

School:	College & Graduate Arts & Sci			
Major:	History			
Minor:	Leadership and Public Policy			
HIEU 2031	Ancient Greece	A-	3.0	
HIEU 3812	Marx	B+	3.0	
HIUS 2052	America and War Since 1900	A-	3.0	
LPPL 3210	Intro to Civic Leadership	A	3.0	
SPAN 2020	Advanced Intermediate Spanish	A-	3.0	
Curr Credits	15.0	Grd Pts	55.200	GPA 3.680
Cuml Credits	69.0	Grd Pts	259.800	GPA 3.765
Honor:	Dean's List			

2020 Spring

School:	College & Graduate Arts & Sci			
Major:	History			

End of Undergraduate Record

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to offer my wholehearted recommendation of Cole Davidson, who has applied to clerk in your chambers. I have taught Cole over three semesters – first in my Torts class in the fall of 2021, then again in fall 2022 in my Insider Trading Seminar, and finally, just this past semester in my Securities Regulation class. I also advised Cole's student note for Law Review, and he has acted as my research assistant on various scholarly projects. As such, I have had the ability to get to know Cole and his talents well. He is an excellent student and scholar. He has been a frequent participant in class, always providing insightful comments and questions. Whenever he visited me in my office hours or met with me to discuss a project, it was clear that Cole is a dedicated thinker with exceptional organizational and analytical skills.

Not only did Cole perform exceptionally well in all of my classes, he has performed exceptionally well in his other courses. Having been a clerk myself, I am aware that hard work is a critical part of the job, as is the ability to get along with colleagues in the close quarters of chambers. I am confident Cole would rise to any challenges he may face being a clerk. My experience getting to know him has proven that he handles challenges and tasks with patience and confidence. I trust he would make a valuable addition to your chambers. It is without reservation that I recommend Cole as a potential employee.

Please let me know if you need any additional information from me.

All the best,

/s/

Karen E. Woody
Associate Professor of Law

Karen Woody - kwoody@wlu.edu

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

During the summer of 2022, we were fortunate enough to have Cole Davidson as a full-time intern in the chambers of the Honorable James P. Jones of the U.S. District Court for the Western District of Virginia.

Upon his arrival, Cole became a key member of our small, close-knit office. He was tasked with handling a variety of assignments that would have otherwise been reserved for law clerks, including researching and writing legal memoranda and drafting opinions in both civil and criminal matters. Cole is a strong writer with the keen ability to synthesize complex legal issues into clear and simple prose — a necessary skill for any aspiring law clerk. He has an eye for detail and was steadfast in his ability to produce a polished writing product that belies his experience level. He also conducted himself with the highest degree of professionalism.

Throughout his internship, Cole had an opportunity to observe daily court proceedings. He always expressed a sincere interest in understanding the issues and asked questions to better understand the reasoning behind the outcomes. Cole possesses an eagerness to learn and a passion for the law that will make him a valuable contributor to your chambers.

Cole's performance would have already won our endorsement, but it was his positivity and sense of humor that set him apart. Not only was Cole committed to his work, but he also conducted himself with such ease and confidence that it had a calming effect on our whole team. At no moment did Cole appear overwhelmed, and he always delivered at a superior level while still welcoming feedback and striving to improve. He also kept our office entertained and in high spirits with his sense of humor, which made him a delight to be around.

We have the highest faith in Cole's commitment, capabilities, and professionalism, and know Cole will be an asset to your chambers.

Please let us know if we can be of any further assistance.

Carrie Macon (primary contact)
Career Law Clerk
The Honorable James P. Jones, Senior United States District Judge
Carrie_Macon@vawd.uscourts.gov
(276) 628-4080

Courtney Hinkle
Term Law Clerk (2021– 2022)
The Honorable James P. Jones, Senior United States District Judge

Carrie Macon - CarrieM@vawd.uscourts.gov

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**
Chambers of the Honorable Thomas T. Cullen
210 Franklin Road SW, Suite 200, Roanoke, Va. 24011

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am the career law clerk for the Hon. Thomas T. Cullen in the Western District of Virginia. In that role, I supervise the interns that work for Judge Cullen. I am writing to offer my enthusiastic support for Cole Davidson, who I understand is applying for a clerkship in your chambers.

Since he was confirmed in September 2020, Judge Cullen has utilized interns during both fall and spring semesters, as well as during the summer. The interns work on any number of matters and always with an eye toward advancing a case or opinion through chambers. In other words, their work product is meant to be useful to Judge Cullen in discharging his responsibilities, never "busy work." Our interns—and Cole specifically—work on matters ranging from pro se prisoner suits alleging deprivations of their civil rights to intellectual property disputes and everything in between.

Cole came to Judge Cullen's chambers as an intern following his first year of law school. Cole is unquestionably smart, and I enjoyed the opportunity to work with him. He was timely with assignments, communicative regarding any issues that arose, and his work product always came to me in a form that I would have been comfortable handing to Judge Cullen with little to no revision.

Cole also has a great wealth of knowledge for a law student and a capacity and interest to learn even more. He attended every court hearing we had, regardless of whether it was a case on which he worked, and he offered keen insights to the issues that were before the court. He was a full-fledged member of our chambers staff, and we were all the better for his contributions.

Outside of his time in our chambers, his experience is impressive for someone who has only completed two years of law school and includes stints in both state (prior to law school) and federal courts. While at the University of Virginia, Cole served as a student advocate on the University Judiciary Committee, acting as a student representative for those accused of violations of the University's Standard of Conduct. As a former UJC member myself, I recognize the value this experience has, and it was one of the reasons I recommend Cole to Judge Cullen for a position. He graduated UVA with a 3.80 GPA, and is currently in the top 10% of his law school class.

Cole is a well-rounded individual, both intellectually and personally. His interests are varied, including baseball, cooking, and Civil War history. And on a personal note, he was a pleasure to have in chambers as a co-worker, an asset that is often overlooked but is vital in a closeknit work environment like a judge's chambers.

In sum, Cole was an asset to our chambers and I am certain he will be an asset to yours. For whatever weight my recommendation may carry with you, I am happy to recommend Cole. I know that Judge Cullen would join in my recommendation as well.

Sincerely,

Scott H. Jones, Esq.

Scott Jones - ScottJ@vawd.uscourts.gov

The following is an excerpt of an opinion I authored during my internship in the chambers of the Honorable James P. Jones, Senior U.S. District Judge for the Western District of Virginia. While I was the primary author of the opinion, I incorporated feedback from the Judge and his chambers staff, and I have received permission from chambers to use this as a writing sample.

The issue for resolution by the court was a motion to dismiss in an employment retaliation case. The following excerpt is a section of the opinion concerning a claim of retaliatory discharge for protected employee speech. The facts of the case concerned a town attorney who alleged that he was fired from his position after criticizing the town government. This section of the opinion addresses whether the attorney's speech was protected by the First Amendment, whether the government had a sufficient interest in limiting the speech, and whether the complaint contained enough allegations of fact to allow the court to infer causation for the purpose of deciding the motion to dismiss.

II.

Under federal pleading rules, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint. To survive a motion to dismiss, a complaint must contain sufficient factual allegations to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). In evaluating a complaint, the court accepts all factual allegations as true and views them in the light most favorable to the non-moving party. *Id.* A complaint does not need detailed factual allegations to survive a motion to dismiss, but it must contain more than mere legal conclusions or a recitation of the elements of a cause of action. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

A. FREE SPEECH RETALIATION CLAIM (COUNT ONE).

I first consider whether McAfee has plausibly alleged a free speech retaliation claim against Cauthorne. The First Amendment protects public employees from termination in retaliation for speaking as citizens on matters of public concern. *McVey v. Stacy*, 157 F.3d 271, 277 (4th Cir. 1998). However, this right “is not absolute,” and courts must balance the employee’s interest in exercising free speech with the government’s interest as an employer in providing efficient public services.

Id. To determine whether a public employee has stated a claim for retaliatory discharge, the court must consider whether: (1) the employee spoke as a citizen on a matter of public concern; (2) the employee’s interest in speaking on the issue outweighed the government’s interest in providing efficient services; and (3) the employee’s speech was a substantial factor in their termination. *Id.* at 277–78.

1. *Private Citizen on a Matter of Public Concern.*

When public employees testify in judicial proceedings, they act outside the scope of their job and are therefore considered private citizens for purposes of the First Amendment. *Lane v. Franks*, 573 U.S. 228, 238–39 (2014). Testifying is considered a “quintessential example of speech as a citizen” because “[a]nyone who testifies in court bears an obligation . . . to tell the truth.” *Id.* at 238. Furthermore, “the mere fact that a citizen’s speech concerns information acquired by virtue of his public employment does not transform that speech into employee — rather than citizen — speech. *Id.* at 240.

I find that McAfee has sufficiently alleged that he spoke as a citizen rather than an employee. Specifically, the Complaint indicates that McAfee was deposed as a part of a legal proceeding. McAfee would have borne the same obligation to tell the truth in the deposition as did the plaintiff in *Franks*. And as the Court confirmed in *Franks*, that McAfee may have acquired knowledge of the subject

matter upon which he testified — Carson’s alleged corruption and abuse of power — during the performance of his job duties as Town attorney does not convert his testimony into unprotected employee speech.

The defendants argue that all of McAfee’s speech was unprotected because, according to his own allegations, his job required him to criticize local officials. Second Am. Compl. ¶ 11, ECF No. 1–2 (“pursuant to his duties to the Town”). Ignoring the carve out for public-employee testimony under *Franks*, they contend that McAfee’s speech is nonetheless unprotected because under *Garcetti v. Caballos*, 547 U.S. 410 (2006), speech made by employees pursuant to their job duties is not considered speech by private citizens on a matter of public concern. *Id.* at 423. It is possible that some of McAfee’s criticisms of Carson and Cauthorne were made pursuant to his official position and thus were not protected speech. I do not need to reach that issue, however, because McAfee’s deposition testimony is plainly protected and as discussed further below, it is plausible that McAfee’s termination was based, at least in part, on that testimony.

2. *Employee and Government Interests.*

When an employee’s speech involves matters of public concern to a more substantial degree, a stronger showing of government interest is required to tip the balancing test in the government’s favor. *Franks*, 573 U.S. at 242 (citing *Connick*

v. Myers, 461 U.S. 138, 150–51 (1983)). In *Franks*, the Supreme Court held that the government failed to assert a compelling interest in limiting an employee’s speech during testimony when there was no evidence that the testimony was false, erroneous, or revealed confidential information. *Id.* Likewise, I find that the Complaint contains sufficient factual allegations that McAfee’s interest outweighs that of the Town. McAfee testified on matters of public concern, and there is nothing to suggest that he testified in bad faith or untruthfully. There is also no allegation that he disclosed confidential information.

It is possible that the Town would be able to show a compelling interest because McAfee held a position of confidence. For example, in *McVey*, the Fourth Circuit held that employees who have confidential or policymaking roles enjoy substantially less First Amendment protection than do lower-level employees. 157 F.3d at 278. The employment hierarchy of the Town is not clear at this stage of the proceeding, but presumably, the Town attorney would be a high-level employee involved in confidential policy decisions. But even assuming the Town could prove that its interest outweighs McAfee’s on this ground, the defendants have failed to identify the relevant interests with the required specificity in their motion. In *Lane v. Anderson*, the court held that generalized statements referencing disrepute, polarization, and divisiveness were inadequate at the motion to dismiss stage to demonstrate a compelling government interest in limiting speech. 660 F.App’x 185,

193–93 (4th Cir. 2016) (unpublished). The court further noted that such generalized statements were especially insufficient where the employee’s speech raises a matter of significant public concern. *Id.*

As in *Anderson*, the defendants make only vague assertions of disharmony when referencing the Town’s interest in limiting McAfee’s speech. They allude only to the need for “efficient and effective governmental operations, without disruption” and to “animosity between [plaintiff] and members of the Town Council.” Defs.’ Mem. Supp. Mot. to Dismiss 15, ECF No. 15. While the alleged discord may be true, these general allegations are the same as those rejected by the *Anderson* court. 660 F.App’x at 192–93. Further, McAfee sought to comment on a matter of serious public interest: government corruption. Where a matter of grave public concern is raised, *Anderson* made clear that the government carries a burden of pointing to specific interests that justify limiting the speech of an employee. *Id.* The defendants point to no such specific interests here.

Finally, the defendants rely upon case law interpreting Virginia’s legal ethics rules and the nature of legal contracts that recognizes an attorney-client relationship “may be, indeed should be, terminated” in the absence of trust and confidence. *Heinzman v. Fine, Fine, Legum, & Fine*, 234 S.E.2d 282, 285 (Va. 1977). Although the general principles governing legal contracts may justify termination of an

attorney, they are not sufficient to show a compelling interest for the purpose of the First Amendment.

3. *Substantial Factor in the Termination.*

Finally, to survive a motion to dismiss, a plaintiff need only allege that the protected speech was a substantial factor in the termination. *McVey*, 157 F.3d at 277–78. To ultimately prevail at trial, a plaintiff must prove that “but for the protected expression, the government official would not have taken the alleged retaliatory action.” *Tobey v. Jones*, 706 F.3d 379, 390 (4th Cir. 2013) (internal quotation marks, citation, and alterations omitted). At this stage of the proceedings, however, the court may infer causation based on temporal proximity between the protected activity and the adverse action. *Id.* at 390–91. Where the alleged retaliatory action was “directly precipitated by [the] constitutionally protected” speech, the causation requirement is clearly met. *Id.*

Viewing all the allegations by McAfee as true, and in the light most favorable to him, the court can infer causation on these facts. McAfee contends that Cauthorne’s stated reason for his termination was his criticism of Carson for “her abuse of authority.” Second Am. Compl. ¶ 39, ECF No. 1–2. McAfee was deposed on February 25, 2021, where he testified that Carson’s activities warranted removal. The plaintiff alleges that his testimony was a source of tension between himself and

Cauthorne, and that Cauthorne's attempts to replace him as Town attorney began soon after he became aware of McAfee's involvement in the petition to remove Carson. That same month, at the Town Council meeting, Cauthorne first proposed terminating McAfee as Town attorney. On March 2, 2021, the Town Council voted to terminate him, less than one week after his deposition. I find that this is sufficient to establish a causal connection necessary to survive a motion to dismiss.

Applicant Details

First Name	Tahmineh
Last Name	Dehbozorgi
Citizenship Status	U. S. Citizen
Email Address	tahmineh@law.gwu.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>115 Anthem Ave</div> <div>City</div> <div>Herndon</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>20170</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	3109102998

Applicant Education

BA/BS From	University of California-Los Angeles
Date of BA/BS	June 2020
JD/LLB From	The George Washington University Law School
	https://www.law.gwu.edu/
Date of JD/LLB	May 15, 2024
Class Rank	I am not ranked
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	Van Vleck Constitutional Law Moot Court

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Ivey, Clegg

clegg.ivey@ncla.legal

Gavoor, Aram

agavoor@law.gwu.edu

917-562-9230

Solove, Daniel

dsolove@law.gwu.edu

(202) 659-2710

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Tahmineh Dehbozorgi

Herndon, VA 20170 | (310) 910-2998 | tahmineh@law.gwu.edu

June 11th, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

My name is Tahmineh Dehbozorgi and I am honored to apply for a clerkship with your chambers for the 2024-2025 term. I am currently a rising third-year student at The George Washington University Law School and will graduate in 2024.

Growing up in Iran under the despotic rule of the Islamic Republic government has fueled my passion for defending the rule of law. As an aspiring civil rights attorney, I am committed to protecting private property rights, promoting freedom of speech, and upholding the rule of law. I believe that joining your chambers under your mentorship would help provide me with the tools to become a public servant and a defender of our Constitution.

My coursework, internships, and extracurricular activities have prepared me for this opportunity. I have taken courses in Constitutional Law, Administrative Law, and Remedies, which have given me a solid foundation in the principles and theories that underlie the issues on your docket. I have developed strong research and writing skills that I feel would be invaluable to this position. Participating in various moot court competitions, including the Van Vleck Constitutional Law Moot Court Competition, has also helped me develop my advocacy skills, further honing my ability to analyze complex legal issues and present them clearly and accurately.

I also had the privilege of clerking for the New Civil Liberties Alliance, where I assisted in litigation on complex cases at both the trial and appellate levels, defending the rights of American citizens. I produced targeted research and written analyses under strict deadlines, through which I gained substantial legal research experience. In addition to my legal skills, I have honed my ability to communicate effectively with various stakeholders and advance effective policy solutions. While working at the Federal Communications Commission, I assisted with regulatory proceedings and conducted research on various administrative law issues.

A resume, law school transcript, undergraduate transcript, and a writing sample are enclosed. Letters of recommendation from Dean Aram Gavoor, Professor Daniel Solove, and Mr. Clegg Ivey will follow. Please do not hesitate to contact me at the above address or telephone number if you need additional information. Thank you for your time and consideration.

Sincerely,



Tahmineh Dehbozorgi

TAHMINAH DEHBOZORGI

115 Anthem Ave, Herndon, VA 20170 | (310) 910-2998 | tahmineh@law.gwu.edu

EDUCATION

The George Washington University Law School Washington, D.C.
 J.D. Candidate, *Concentration in National Security Law* (Foreign Relations & Cybersecurity) Expected May 2024
Moot Court: Board Member | Van Vleck Constitutional Law Moot Court Competition (Quarterfinalist)
Honors: James A. Gass Merit Scholarship | Federal Communications Bar Association Scholarship
Awards: Knowledge in Action Career Internship Fund Award
Leadership: SBA Deputy Vice President of Student Affairs | The Federalist Society (Secretary)
Activities: National Security Law Association | University Singers and Chamber Ensemble (Mezzo-Soprano)

University of California, Los Angeles (UCLA) Los Angeles, CA
 B.A., *magna cum laude*, in Political Science, with *Honors* and *Concentration in International Relations* June 2020
Honors: GPA: 3.87 | Dean's List
Awards: UCLA Chancellor's Service Award (2020)
Leadership: Young Americans for Liberty (California State Chairwoman)
Activities: UC Center for American Politics and Public Policy Scholar (2019) | UCLA Chorale (Mezzo-Soprano)

LANGUAGE SKILLS

Farsi (Native) | **French** (Proficient) | **Arabic** (Proficient) | **Spanish** (Intermediate) | **German** (Intermediate)

PROFESSIONAL EXPERIENCE

AT&T, Washington, D.C. | Global Public Policy Intern May 2023 – Present
 • Analyze and draft memos on FTC's Magnuson-Moss rulemaking concerning privacy and competition
 • Collaborate with Assistant Vice President of GPP on drafting comments for FTC's Negative Options Rule amendment

Federal Communications Commission, Washington, D.C. | Legal Intern Aug. 2022 – Dec. 2022
 • Advised Chief of Public Safety and Homeland Security Bureau with legal issues regarding cybersecurity and licensing
 • Researched FCC's rulemaking authority pursuant to "Cyber Incident Reporting for Critical Infrastructure Act of 2022"
 • Synthesized complex technical documents on telecommunication infrastructure for attorneys

New Civil Liberties Alliance, Washington, D.C. | Summer Law Clerk May 2022 – July 2022
 • Researched and compiled legal memoranda for impact litigation in constitutional appellate cases
 • Drafted portions of *amicus* brief analyzing reasonable expectations of privacy related to Fourth Amendment
 • Provided legal analysis on standing and mootness to survive a motion to dismiss in the First Circuit

The George Washington University Law School, Washington, D.C. | Research Assistant March 2022 - Present
 • Conduct legal and historical research with Professor Robert J. Cottrol by using primary sources in foreign languages
 • Edit and correct citations of a book on the history of African immigrants in Cape Verde, Argentina

Young Voices, Washington, D.C. | Digital Director & Public Relations Associate Jan. 2021 – Aug. 2021
 • Placed 45 clients on TV and radio segments such as Fox News, Sky News, and Fox 5 D.C.
 • Developed and managed Young Voices' branding, content strategy, and public relations efforts
 • Appeared regularly on radio, podcasts, and TV to discuss topics related to education, foreign policy, and elections

University of California, Los Angeles, CA | Research Assistant Jan. 2020 – June 2020
 • Analyzed statistical data for shareholders of private and public entities in Iran to measure data disclosure transparency
 • Measured the impact of U.S. sanctions on Iran's spending priorities from 2009-2019

Office of Congressman Thomas Massie (KY-4) Washington, D.C. | Legislative Intern March 2019 – June 2019
 • Assisted and advised constituents with navigating their cases involving federal agencies such as the USCIS and the IRS
 • Conducted legislative research on topics including firearm regulations and healthcare policy

INTERESTS

Music (choral singing and playing the violin) | Watercolor Painting | Video Gaming | Martial Arts and Fitness | Poetry

TAHMINAH DEHBOZORGI

115 Anthem Ave, Herndon, VA 20170 | (310) 910-2998 | tahmineh@law.gwu.edu

PUBLICATIONS

1. *The GOP Must Reject Populism or Continue Losing Young Voters*, ORANGE COUNTY REGISTER, May 26, 2023.
2. *Students Need the Internet to Succeed, Congress Can Do Something About it*, WASHINGTON EXAMINER, May 23, 2023.
3. *The FTC Is Making a Mistake by Trying to Stop Microsoft from Acquiring Activision*, NATIONAL REVIEW, April 11, 2023.
4. *Congress Must Authorize FCC to Auction More Spectrum to 5G Provides*, DC JOURNAL, March 21, 2023.
5. *Iranian Americans Continue to Put Pressure on Rogue Regime in Iran*, ORANGE COUNTY REGISTER, March 11, 2023.
6. *Consumers Must Not Bear the Cost of Southwest Airlines' Chaos*, ORANGE COUNTY REGISTER, Jan. 3, 2023.
7. *The U.S. and its Allies Must Stand with the Iranian People Against Tyranny*, ORANGE COUNTY REGISTER, Sept. 22, 2022.
8. *Law Schools Shouldn't Be Ideological Echo Chambers*, ORANGE COUNTY REGISTER, Aug. 15, 2022.
9. *President Biden Must Prioritize Checking China's Global Ambitions*, ORANGE COUNTY REGISTER, July 22, 2022.
10. *SCOTUS Must Limit Unwarranted Searches*, NEW CIVIL LIBERTIES ALLIANCE, July 21, 2022.
11. *Don't Let the Cancel Culture Restrict the Arts*, ORANGE COUNTY REGISTER, May 30, 2022.
12. *The West Must Prevent the War in Ukraine from Prolonging*, L.A. DAILY NEWS, March 16, 2022.
13. *Students Deserve In-Person Instruction, Not Substandard Remote Learning*, ORANGE COUNTY REGISTER, Jan. 16, 2022.
14. *Cybersecurity Must Be Top Priority*, ORANGE COUNTY REGISTER, Sept. 19, 2021.
15. *The Botched Withdrawal from Afghanistan Will Cost Humanity Greatly*, ORANGE COUNTY REGISTER, Sept. 12, 2021.
16. *Political Correctness Infects Our Speech and Our Ideas*, ORANGE COUNTY REGISTER, July 7, 2021.
17. *Juneteenth Is the Celebration of Individualism*, FREE THE PEOPLE, June 23, 2021.
18. *Consumers Will Pay for Cyberattacks on Beef Megaproducer*, ORANGE COUNTY REGISTER, June 17, 2021.
19. *Eulogy for Mathematics in California*, ORANGE COUNTY REGISTER, May 24, 2021.
20. *America Must Remain Vigilant About China's Global Ambitions*, ORANGE COUNTY REGISTER, March 28, 2021.
21. *The Future of Conservatism Isn't Trumpism, it's Liberty*, ORANGE COUNTY REGISTER, Jan. 17, 2021.
22. *The Private Sector is Stepping Up to Close the Digital Divide*, ORANGE COUNTY REGISTER, Jan. 2, 2021.
23. *Young People Need Freedom to Achieve the American Dream*, ORANGE COUNTY REGISTER, Nov. 23, 2020.
24. *The End of the Petro-State*, REALCLEAR WORLD, Oct. 26, 2020.
25. *Want to Save the Gig Economy? Let's Hope Prop. 22 Passes*, TOWNHALL, Sept. 2, 2020.
26. *Congress Needs to Act to Prevent a Massive Meat Shortage*, FREE THE PEOPLE, July 24, 2020.
27. *Harvard Law Professor Proposes "Common Good Constitutionalism"*, CAMPUS REFORM, May 5, 2020.
28. *Wisconsin Campus Free Speech Debate a Hot Topic, Even With Students at Home*, CAMPUS REFORM, April 7, 2020.
29. *5 Times Students' First Amendment Rights Were Violated on Campus in 2019*, CAMPUS REFORM, Jan. 11, 2020.
30. *California Freelance Law Muzzles Student Journalists Like Me*, CAMPUS REFORM, Jan. 6, 2020.
31. *UCLA's 'Storytelling for Social Justice' Pushes "Unsubstantiated" Claims*, CAMPUS REFORM, Dec. 4, 2019.
32. *How US Foreign Policy Hurts Iranian Americans*, WASHINGTON EXAMINER, Nov. 18, 2019.

SELECTED MEDIA APPEARANCES

- *Global Lane: Iranian Protestors are Tortured by the Government* (CBN March 23, 2023).
- *America's Newsroom: Law Student Responds to Justice Thomas' Teaching Resignation* (Fox News July 28, 2022).
- *KTVO News: Law Student Speaks Up for Clarence Thomas* (ABC News July 8, 2022).
- *Fox & Friends: GW Supports Clarence Thomas Teaching at Law School* (Fox News June 30, 2022).
- *The Lead: Reasons Why U.S. Will Not Go Back to the Nuclear Deal with Iran* (Iran International Feb. 18, 2021).
- *The Final 5: GameStop Stock Saga Evokes Nostalgia for Gamers* (Fox 5 DC Jan. 15, 2021).
- *The Final 5: How the PRIME Act Could Fix Meat Shortages During COVID-19* (Fox 5 DC Aug. 7, 2021).

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G36249493
Date of Birth: 17-AUG

Date Issued: 06-JUN-2023

Record of: Tahmineh Dehbozorgi

Page: 1

Student Level:
Admit Term:

Issued To: TAHMINEH DEHBOZORGI
TAHMINHE@LAW.GWU.EDU

REFNUM:5633830

Current College(s):
Current Major(s):

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2021

Law School
Law

MUS 1091	University Singers		0.00	P
Ehrs	0.00	GPA-Hrs	0.00	GPA 0.000
CUM	0.00	GPA-Hrs	0.00	GPA 0.000
Good Standing				

Spring 2022

Law School
Law

MUS 1061	Chamber Ensembles		0.00	P
-I, II, III, IV				
Ehrs	0.00	GPA-Hrs	0.00	GPA 0.000
CUM	0.00	GPA-Hrs	0.00	GPA 0.000
Good Standing				

Fall 2022

CMUS 1091	University Singers		0.00	P
Ehrs	0.00	GPA-Hrs	0.00	GPA 0.000
CUM	0.00	GPA-Hrs	0.00	GPA 0.000
Good Standing				

Spring 2023

CMUS 1091	University Singers		0.00	P
Ehrs	0.00	GPA-Hrs	0.00	GPA 0.000
CUM	0.00	GPA-Hrs	0.00	GPA 0.000
Good Standing				

***** TRANSCRIPT TOTALS *****
Earned Hrs GPA Hrs Points GPA

TOTAL INSTITUTION	0.00	0.00	0.00	0.000
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OVERALL	0.00	0.00	0.00	0.000
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Katie Cloud
Katie Cloud
Interim University Registrar

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WASHINGTON, DC

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Gwid : G36249493
Date of Birth: 17-AUG

Date Issued: 06-JUN-2023

Record of: Tahmineh Dehbozorgi

Page: 1

Student Level: Law
Admit Term: Fall 2021

Issued To: TAHMINEH DEHBOZORGI
TAHMINHE@LAW.GWU.EDU

REFNUM:5633830

Current College(s): Law School
Current Major(s): Law

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
---------	--------------	------	-----	-----

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2021

Law School
Law

LAW 6202	Contracts Chatman	4.00	B+	
LAW 6206	Torts Schoenbaum	4.00	B-	
LAW 6212	Civil Procedure Smith	4.00	B-	
LAW 6216	Fundamentals Of Lawyering I Pont	3.00	B+	
Ehrs	15.00 GPA-Hrs	15.00	GPA	2.978
CUM	15.00 GPA-Hrs	15.00	GPA	2.978
Good Standing				

Spring 2022

Law School
Law

LAW 6208	Property Nunziato	4.00	B	
LAW 6209	Legislation And Regulation Schaffner	3.00	B+	
LAW 6210	Criminal Law Cottrol	3.00	B	
LAW 6214	Constitutional Law I Morrison	3.00	B-	
LAW 6217	Fundamentals Of Lawyering II Pont	3.00	B	
Ehrs	16.00 GPA-Hrs	16.00	GPA	3.000
CUM	31.00 GPA-Hrs	31.00	GPA	2.989
Good Standing				

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
---------	--------------	------	-----	-----

Fall 2022

LAW 6400	Administrative Law Gavoor	3.00	A	
LAW 6486	Information Privacy Law On Solove	3.00	A	
LAW 6644	Moot Court - Van Vleck	1.00	CR	
LAW 6668	Field Placement Mccoy	2.00	CR	
LAW 6673	Field Placement Tutorial Mccoy	1.00	A	
LAW 6883	Counterintelligence Law&Policy Kedian	2.00	B	
Ehrs	12.00 GPA-Hrs	9.00	GPA	3.778
CUM	43.00 GPA-Hrs	40.00	GPA	3.167
Good Standing				

Spring 2023

LAW 6238	Remedies	3.00	B+	
LAW 6380	Constitutional Law II	3.00	A-	
LAW 6402	Antitrust Law	3.00	A	
LAW 6474	Trademark & Unfair Compet Law	3.00	B+	
LAW 6870	National Security Law	2.00	A	
Ehrs	14.00 GPA-Hrs	14.00	GPA	3.643
CUM	57.00 GPA-Hrs	54.00	GPA	3.290
Good Standing				

Fall 2023

LAW 6232	Federal Courts	3.00	-----	
LAW 6255	Ucc Sales Of Goods	2.00	-----	
LAW 6414	Telecommunications Law	2.00	-----	
LAW 6601	History Of The Common Law	3.00	-----	
LAW 6652	Legal Drafting	2.00	-----	
LAW 6656	Independent Legal Writing	2.00	-----	
Credits In Progress:		14.00		

***** TRANSCRIPT TOTALS *****
Earned Hrs GPA Hrs Points GPA

TOTAL INSTITUTION 57.00 54.00 177.67 3.290

OVERALL 57.00 54.00 177.67 3.290

END OF DOCUMENT



Katie Cloud
Katie Cloud
Interim University Registrar

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Washington, DC 20052

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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and

School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit <http://go.gwu.edu/corcorantranscriptkey>

THE CONSORTIUM OF UNIVERSITIES OF
THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
CU	Catholic University of America	NVCC	Northern Virginia Community College
GC	Gallaudet University	PGCC	Prince George's Community College
GU	Georgetown University	SEU	Southeastern University
GL	Georgetown Law Center	TC	Trinity Washington University
GMU	George Mason University	USU	Uniformed Services University of the Health Sciences
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I/ and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-.

Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C- grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; B+, B, B-, Good; C+, C, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt; CN/P, Conditional converted to Pass; CN/F, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

For historical information not included in the transcript key, please visit

<http://www.gwu.edu/transcriptkey>

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University of California, Los Angeles
UNDERGRADUATE Student Copy Transcript Report
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Student Information

Name: DEHBOZORGI, TAHMINEH
UCLA ID: 005179484
Date of Birth: 08/17/XXXX
Version: 08/2014 | SAITONE
Generation Date: December 15, 2021 | 03:55:25 PM
This output is generated only once per hour. Any data changes from this time will be reflected in 1 hour.

Program of Study

Admit Date: 09/24/2018
COLLEGE OF LETTERS AND SCIENCE

Major:
POLITICAL SCIENCE

Degrees | Certificates Awarded

BACHELOR OF ARTS Awarded June 12, 2020
in POLITICAL SCIENCE
Magna Cum Laude
With College Honors

Secondary School

IRAN, June 2016

University Requirements

Entry Level Writing satisfied
American History & Institutions satisfied

California Residence Status

Resident

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Summer Sessions 2018

ACADEMIC WRITING	ENGCOMP 100W	5.0	20.0	A
Writing Intensive				
FIAT LUX FRSHMN SEM	HIST 19	1.0	0.0	P
Honors Content				
INTRO AFRO-AMER HIS	HIST M150B	4.0	16.0	A+
STUDENT RESRH FORUM	HNRS 101A	2.0	0.0	P
Honors Content				
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	12.0	12.0	36.0	4.000

Transfer CreditInstitution

LOS ANGELES PIERCE COLLEGE

Psd
1 Term to 10/2018 100.5

Fall Quarter 2018Major:

POLITICAL SCIENCE

CLASSICAL POETRY	IRANIAN 103A	4.0	16.0	A+
SURVEY PERSIAN LIT	IRANIAN 150A	4.0	16.0	A
UCLA CHORALE	MUSC C90A	2.0	8.0	A
POLITICAL PARTIES	POL SCI 142A	4.0	16.0	A
Dean's Honors List				
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	14.0	14.0	56.0	4.000

Winter Quarter 2019

CLASSICAL PROSE	IRANIAN 103B	4.0	16.0	A+
PEACE AND WAR	POL SCI 126	4.0	13.2	B+
NOMNTS FOR U.S REPS	POL SCI 191C	4.0	16.0	A
Dean's Honors List				
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	12.0	12.0	45.2	3.767

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Spring Quarter 2019

FRGN PLCY AFTR 9/11	POL SCI 120B	4.0	14.8	A-
CAPPP WASHINGTON SEM	POL SCI M191DC	8.0	29.6	A-
WASHDC INTERNSHIP	POL SCI M195DC	4.0	0.0	P
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	16.0	16.0	44.4 3.700

Fall Quarter 2019

ETHCL&PLCY-MASS COM	COMM 187	4.0	16.0	A
POL-CLIMATE CHANGE	INTL DV 160	4.0	12.0	B
UCLA CHORALE	MUSC C185A	2.0	8.0	A
LAWS OF WAR & PEACE	POL SCI 118	4.0	16.0	A
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	14.0	14.0	52.0 3.714

Winter Quarter 2020

IRANIAN CIVILIZATION	HIST M110B	4.0	16.0	A
UCLA CHORALE	MUSC C185A	2.0	8.0	A
SPC STDS-INTNTL REL	POL SCI 139	4.0	16.0	A
CITY DEMOCRACY	POL SCI 191C	4.0	16.0	A
Dean's Honors List				
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	14.0	14.0	56.0 4.000

Spring Quarter 2020

IRANIAN CIVILIZATION	HIST M110C	4.0	16.0	A+
INTL DEV-USING MAJR Honors Content	HNRS 144	5.0	20.0	A

Due to the COVID-19 pandemic, Passed/
Not Passed grading permitted for many
classes and degree requirements.

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	9.0	9.0	36.0	4.000

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UNDERGRADUATE Totals

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Pass/No Pass Total	7.0	7.0	N/a	N/a
Graded Total	84.0	84.0	N/a	N/a
Cumulative Total	91.0	91.0	325.6	3.876
Total Non-UC Transfer Credit Accepted	100.5			
Total Completed Units	191.5			

END OF RECORD
NO ENTRIES BELOW THIS LINE



To Whom It May Concern,

I highly recommend Tahmineh Dehbozorgi for a judicial clerkship. Tahmineh worked at the New Civil Liberties Alliance as a legal clerk during the summer of 2022, primarily doing legal research and writing, but her work also included participation in moots for upcoming court arguments, evaluating potential new cases, attending events on administrative law, and brainstorming about legal developments and how they might bear on the firm's work in constitutional and administrative law.

Tahmineh's legal work was of the highest quality. Indeed, NCLA invited Tahmineh back for the summer of 2023 as a senior law clerk - the only one of her peers to be so invited. NCLA also sponsored Tahmineh for the Bradley Summer Associate Fellowship in 2023, which she was granted.

Tahmineh is an extraordinary woman, filled with passion and the kind of moxie that sets her apart from her peers. Like many intelligent law students, she excels at disentangling knotty issues and drafting cogent, crisp analyses, but I also found that her extensive experience in public relations and media gave her a real talent for finding the "hook" in an argument. Despite the volume of work she produced, Tahmineh remained happily engaged, producing work that could be relied upon for its comprehensiveness, accuracy, and insight.

Tahmineh's work covered a variety of thorny issues, including helping to draft briefing on the special needs exception to the Fourth Amendment. She also drafted a motion to dismiss in a 1983 claim against agencies and officials in Rhode Island, and a FOIA memo for one of our vaccine mandate cases. She was especially helpful in doing research and mooted to help our appellate litigators prepare for oral argument in an SEC-related appeal in the Fifth Circuit.

Tahmineh has a strong work ethic, but she is a happy warrior - you want her next to you in that foxhole. Every time NCLA had an event open to the public, it seemed like Tahmineh brought several new faces in. She is a natural born leader and her peers find her persuasive: They want to follow her.

I remember with fondness my year spent clerking in the Sixth Circuit back in the late 90s, so I am speaking from personal experience when I say that I am confident that the professional work and morale of any chambers would be greatly enhanced by Tahmineh's presence. I recommend Tahmineh without any reservation.

Please do not hesitate to contact me should you require additional information.

Sincerely,

A handwritten signature in black ink that reads "Clegg Ivey".

J Clegg Ivey III

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I enthusiastically recommend Tahmineh Dehbozorgi for a clerkship in your chambers. Her intellect, passion for the law, work ethic, and poise make her an excellent candidate. She is the personification of the American dream as a naturalized U.S. citizen who fled the Islamic Republic of Iran along with her family. If given the opportunity to clerk in your chambers, I am confident that she will succeed in her work with minimal need for supervision.

Tahmineh took my Administrative Law course in the fall 2022 semester at the George Washington University Law School. She earned an A by performing superbly on my examination and by answering my Socratic method questions with nuance and poise. She is taking my Constitutional Law II (individual liberties) and National Security Law courses in the spring 2023 semester. Unsurprisingly, Tahmineh has asked incisive questions and answered my questions exceptionally well. She makes the most out of every moment that she has in law school. Her work ethic is inspiring, as is her deep commitment to American liberal democratic principles. To that end, she boasts an impressive comprehension of constitutional and statutory interpretive methodology. She has a strong command of Originalism and Textualism that is undergirded by her knowledge of non-originalist and purposivist methodologies.

Outside the classroom, Tahmineh has fully asserted herself. She is active in the Student Bar Association, the Federalist Society, and National Security Law Association. She has served as a legal intern at the Federal Communications Commission and the New Civil Liberties Alliance. She also authors op-eds and regularly appears on national and international news on account of her parallel career as columnist. As a clerk in your chambers, she would apply her knowledge and skills exclusively to court matters.

Tahmineh also has the temperament to capably serve as a clerk. She is humble, yet assertive. She is deeply thoughtful. Most importantly, she is mature and exercises sound judgment. If you have any questions about or would like to discuss my unreserved recommendation of Tahmineh, please do not hesitate to contact me at (202) 994-2505 or at agavoor@law.gwu.edu.

Sincerely,

Aram A. Gavoor
Associate Dean for Academic Affairs
& Professorial Lecturer in Law

Aram Gavoor - agavoor@law.gwu.edu - 917-562-9230

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I strongly recommend Tahmineh Dehbozorgi to be a law clerk in your chambers. Tahmineh is a terrific student and excellent writer. She is thoughtful and hard-working, and I am confident that she will be a great clerk.

Tahmineh was in my Information Privacy Law class. She was a very engaged student and participated frequently. Her comments were always thoughtful and on point. Her performance on the final exam was excellent – she earned an A.

Tahmineh also wrote a short paper under my supervision, a requirement of her field placement at the Federal Communications Commission. Her paper was well-written – clear, concise, insightful, and sophisticated. Because I was so impressed with her work, I recommended her to AT&T for a summer internship position this summer, and she ultimately got the job.

Tahmineh really hit her stride last fall semester here at George Washington University Law School. She had a superb semester. She is a hard and diligent worker, and she has always been courteous and professional. She is tremendously enthusiastic about her work, and this translates into her going the extra mile.

Therefore, I very strongly recommend Tahmineh for a clerkship in your chambers. Her writing and analytical abilities are terrific. I am confident that she will go above and beyond as a law clerk.

Please feel free to contact me at (202) 441-8412 or dsolove@law.gwu.edu if you have further questions.

Sincerely,

Daniel J. Solove

Daniel Solove - dsolove@law.gwu.edu - (202) 659-2710

WRITING SAMPLE

Tahmineh Dehbozorgi
115 Anthem Ave.
Herndon, VA 20170
(3100-910-2998)

The attached writing sample is an excerpt from a brief submitted for The George Washington University's Van Vleck Constitutional Law Moot Court Competition. The case involved a challenge to the New Columbia Challenge Statute allowing "[a]ny qualified voter registered to vote for the office for which [a] candidate has filed" may challenge said candidate's eligibility by filing a complaint with the Superintendent of Elections ("Superintendent"), "alleg[ing] with specificity the grounds for asserting that [he] does not meet the constitutional or statutory qualifications for office." A voter in Petitioner Rep. Oshaghnessy's congressional district filed such a challenge, contesting Petitioner's eligibility to serve in the United States House of Representatives alleging that the Petitioner has engaged in insurrection by giving Capitol rioters a tour of the Capitol complex. Before the Superintendent could hold a hearing and issue a decision, Petitioner filed suit, asking that the district court enjoin the assertedly unconstitutional adjudication from moving forward. The competition problem differed somewhat from the actual case then pending before the United States Supreme Court. The questions presented for the competition were:

1. Whether the federal courts have jurisdiction under Article III of the U.S. Constitution and pursuant to the Younger Abstention Doctrine to adjudicate the constitutionality of the New Columbia Challenge Statute at this stage in the state proceedings?
2. Whether the New Columbia Challenge Statute violates Article I, Section 5 of the U.S. Constitution by empowering the State of New Columbia to determine whether a candidate is eligible to hold the office of a United States Representative?

I represented the Respondent, Superintendent Morgenthal. I chose the section of brief addressing Article I, Section 5 as my writing sample.

II. THE NEW COLUMBIA CHALLENGE STATUTE DOES NOT VIOLATE ARTICLE I, SECTION 5 OF THE U.S. CONSTITUTION.

A. The text of Article I, Section 5, Clause 1 is silent on setting qualifications for Congressional “candidates”.

Petitioner’s claim that New Columbia may not constitutionally determine the qualifications of its Congressional *candidates* is textually flawed. The text of Article I, Section 1, Clause 1 plainly reads: “Each House shall be the Judge of the Elections, Returns and Qualifications of *its own Members*”; it does not mention “candidates.” U.S. Const. art. I, § 5, cl. 1 (emphasis added). The Challenge Statute applies only to *candidates*, not “Members,” as this Court has defined that term. *See Barry v. U.S. ex rel. Cunningham*, 279 U.S. 597, 615 (1929) (defining “Member” as a candidate elected to either House and who receives a certificate from Governor to that effect).

In *Cawthorn*, Judge Wynn ably analyzes the text of the provision upon which Petitioner rests his attack. *Cawthorn v. Amalfi*, 35 F.4th 245, 262 (4th Cir. 2022) (Wynn, J., concurring). “By its clear terms,” Judge Wynn observed, Article I, Section 5, Clause 1 “only applies to Congress’s ‘own Members’ — those individuals *elected or appointed* to our national legislative body.” *Id.* (emphasis added). Indeed, as ours is a government of enumerated powers, “if the Framers expressly conferred ‘some powers’ on Congress, but not others, we must conclude those other powers have not been granted.” *Id.* (quoting *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. at 534, (2012)); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 847 (1995) (Thomas, J. dissenting) (“The Federal Government enjoys no authority beyond what the Constitution confers: The Federal Government’s powers are limited and enumerated.”). The Challenge Statute empowers voters to challenge the qualifications of *candidates* in state, federal, and local elections, *not* those of sitting members of Congress. (N.C. Gen. Stat. § 107-18; R. at 1). New Columbia must be presumed to

possess this power. As the Constitution is silent on setting qualifications for candidates, to construe its text to grant such a power is to ignore the Tenth Amendment and undermine the very character of our national government. *See* U.S. Const., amend X.

Judge Tsai’s dissent, echoing Petitioner’s position, confuses “candidate” with “Member,” using them interchangeably despite their varying nature. (*Oshaghnessy v. Morgenthal*, No. 22-1623556 (13th Cir. July 26, 2022) (Tsai, J., dissenting); R. at 10). Simply put, this is not what the Framers intended by their careful use of the word “Members.” U.S. Const. art. I, § 5, cl. 1. To confound these terms is to presuppose that “the Constitution was unartfully drafted, and that the Framers must have mistakenly omitted ‘candidates’ or ‘would-be Members’ from Article I, Section 5.” *Cawthorn*, 35 F.4th at 264 (Wynn, J., concurring). Judge Wynn could not adopt such an erroneous interpretation, and nor should this Court.

Further, Congress has never exercised the power of judging the constitutional qualifications of candidates. Such long historical practice weighs heavily against Petitioner’s misconstruction. *Barry*, for instance, illustrates the meaning of “Member” under Article 5, Section 1, and qualifies Congress’ adjudicatory power over its members. *Barry*, 279 U.S. 597. A candidate, William Vare, was elected to the U.S. Senate and received a certificate from the governor affirming his placement; the Senate, however, refused to seat him. *Id.* The Court explained that the Senate had the authority to adjudicate Vare’s constitutional qualifications because he was elected and certified as the winner of the race and was, as such, a *member* of the United States Senate. *Id.* at 613 (citing *Reed v. County Commissioners*, 277 U. S. 376, 388 (1928)). Therefore, the Senate had properly asserted jurisdiction under Article 1, Section 5 of the U.S. Constitution. As an additional example, take *Powell v. McCormack*, where the House refused to seat a Representative on the

basis of allegations of fraud and illegal monetary transactions. *Powell v. McCormack*, 395 U.S. 486 at 489 (1969). Powell argued that such a refusal was unconstitutional because he was properly elected and met all constitutional requirements for service as a *member* of the U.S. House of Representatives. *Id.* at 490. The defendants invoked Article 1, Section 5, Clause 1 to authorize their refusal. *Id.* at 522. Nonetheless, this Court found that the House had overstepped, holding that it only has discretion to determine whether a member meets the qualifications expressly stated in Article I, Section 2 --- requirements of age, citizenship, and residence. *See* U.S. Const., art. I, § 2. The Court stressed the importance of allowing the people of the States to choose their legislators, “conclud[ing] that Article I, Section 5 is *at most* a ‘textually demonstrable commitment’ to Congress to judge *only* the qualifications *expressly set forth in the Constitution*.” *Powell*, 395 U.S. at 548 (emphasis added).¹ Such a power over candidates, however, is glaringly absent from the text of Article I.

This Court must reject Petitioner’s constitutional attack because the plain import of the Constitution, enriched by judicial precedent and historical practice, is clear: Congress, while empowered to adjudicate certain limited disputes as to whether a member qualifies to be seated, does not have the authority to judge the qualifications of candidates, even with respect to Congressional races.

B. The Text of the Constitution and this Court has not precluded the states from judging the constitutional qualifications of congressional candidates under Article 1, Section 5.

¹ The Court reasoned that the “textual commitment” prong of the political questions doctrine did not bar federal courts from adjudicating claims concerning the exclusion of a member-elect from his duly won seat in Congress. *Powell*, 395 U.S. at 486.

Article 1, Section 5 does not preclude the States from adjudicating disputes over the qualifications of their congressional candidates. Under Article I, Section 1, Clause 1, “Each House shall be the *Judge* of the Elections, Returns and Qualifications of its own Members.” U.S. Const. art. I, § 5, cl. 1 (emphasis added). New Columbia has the power to judge the qualifications of its own candidates without violating the Constitution. This Court has previously held that *adding* qualifications violates the Constitution. *See generally Thornton*, 514 U.S. at 779 (1995). Moreover, this Court has never interpreted Congress’ authority in setting qualifications broadly but rather has limited such adjudicative power to its own members. U.S. *See Barry v. U.S. ex rel. Cunningham*, 279 U.S. 597, 615 (1929). Const. art. I, § 5, cl. 1; *see McCulloch v. Maryland*, 17 U.S. 316, 405 (1819) (holding that Congress “can exercise only the powers granted to it”). The adjudicatory power over candidates clearly remains in the hands of the States.

1. New Columbia Challenge Statute is adjudicative in nature and does not add additional qualifications to candidate eligibility.

The state of New Columbia has the power to judge the qualifications of its own candidates without violating the Constitution. This Court must not analogize the facts of the current case to *Thornton* because the law in question is distinguishable. 514 U.S. 779 (1995). The Challenge Statute does not add any additional qualifications nor usurp the constitutionally empowered Congress to judge the qualifications of its members. It is an adjudicative law, allowing New Columbia to enforce pre-existing constitutional qualifications as applied to candidates, a class to which Petitioner belongs. (N.C Gen. Stat. § 107-18; (R. at 1)).

The dissent inartfully relies on *Thornton* in misclassifying state compliance with *pre-existing constitutional qualifications* as an attempt to *set* qualifications for members of Congress.

Thornton, 514 U.S. 779 (1995); (*Oshaghnessy v. Morgenthal*, No. 22-1623556 (13th Cir. July 26, 2022) (Tsai, J., dissenting); R. at 10). However, the Challenge Statute merely regulates candidates by *adjudicating* disputes over qualifications; it does not *add* an additional qualification beyond what the Constitution has provided in Article 1, Section 5, Clause 1. *See Thornton*, 514 U.S. at 801. In *Thornton*, this Court was concerned about an inflexible statute that excluded a class of candidates on an extra-constitutional basis beyond the scope of state power under the Elections Clause. U.S. Const., Art. I, § 4, cl. 1.; *see id.* Thus, the Court struck down an amendment to the Arkansas State Constitution that “prohibit[ed] the name of an otherwise-eligible candidate for Congress from appearing on the general election ballot if that candidate ha[d] already served three terms in the House of Representatives or two terms in the Senate.” *Thornton*, 514 U.S. at 783. The Court cited the legislative purpose behind the amendment, which was disqualifying congressional incumbents from further service. *Id.* at 829 (citing *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251 (1994)). It follows that Judge Tsai’s reliance on *Thornton* is unfounded because the nature of the law there considered was significantly different from the Challenge Statute currently under consideration. (*Oshaghnessy v. Morgenthal*, No. 22-1623556 (13th Cir. July 26, 2022) (Tsai, J., dissenting); R. at 10).

Here, *Thornton* is not controlling; the current case is distinguishable because the New Columbia Challenge Statute does not add qualification requirements to the Constitution, and instead only sets forth a process to adjudicate pre-existing qualifications should disputes thereover arise. This Court in *Thornton* held that handicapping a class of candidates for Congress is unconstitutional when it has the purpose and effect of creating additional qualifications. *See Thornton*, 514 U.S. at 779.

The Challenge Statute is not merely a ballot-access statute, and its existence – unlike the amendment at issue in *Thornton* – does not automatically disqualify Petitioner from candidacy. It empowers the State only to adjudicate the qualifications of the candidates on a pre-existing constitutional basis. *See Thornton*, 514 U.S. at 779. Rather, the statute creates a framework through which the constitutional eligibility of a candidate can be challenged through an administrative adjudication, one which provides due notice and an opportunity to be heard. (N.C. Gen. Stat. § 107-18.; R. at 1). The Superintendent has the adjudicative power to determine the eligibility of the candidate after and upon the evidence gathered at a hearing. *See id.* Moreover, the Statute provides the candidate and the challengers an avenue to appeal their case to the New Columbia Supreme Court. *See id.*

The state of New Columbia may adjudicate such qualifications under the Challenge Statute without usurping the House's power under Article 1, Section 5. Therefore, it does not violate the rule laid down in *Thornton*, and as such, the Challenge Statute not only comports with the constitutional text but this Court's own precedents as well.

2. A federal court has upheld a similar challenge statute against a similar constitutional attack, furnishing additional persuasive authority against Petitioner's claim.

This Court should consider the current trend of law in upholding the constitutionality of the Challenge Statute. The State of Georgia has a similar challenge statute to New Columbia, which allows voters to challenge whether an individual candidate meets “the constitutional and statutory qualifications for holding the office being sought”. Ga. Code Ann. § 21-2-5 (a) (West). The statute also provides an administrative procedure similar to the statute at hand to adjudicate the challenge. *Id.* at (b). Finally, the statute provides a right to seek prompt judicial review. *Id.* at

(e). Representative Marjorie Taylor Greene filed a complaint contesting the constitutionality of Georgia’s “Challenge Statute” after five voters in her district filed a challenge petition. *Greene v. Raffensperger*, 22-CV-1294-AT, 2022 WL 1136729, at *1 (N.D. Ga. Apr. 18, 2022). The court correctly held that “in complying with the procedures set out in the Challenge Statute, the State of Georgia [was] not imposing any additional qualifications on Plaintiff”; it was only enforcing the preexisting constitutional requirements set forth in the Fourteenth Amendment. *Id.* at *27; *see* U.S. Const. amend. XIV, § 3. As the New Columbia Challenge Statute similarly empowers the State to enforce preexisting constitutional requirements and does not impose additional qualifications on Petitioner, *Greene* provides a persuasive framework for this Court to follow in upholding the statute here under attack.

To maintain the constitutional balance between the state and the federal governments, it is crucial for the State of New Columbia to judge the qualifications of its own candidates and bar unqualified candidates. After all, the Constitution assigns such responsibilities to both Congress and the States. U.S. Const. art. I, § 4, cl. 1; *see Hutchinson v. Miller*, 797 F.2d 1279, 1284 (4th Cir. 1986) (acknowledging that the Constitution “express[ly] delegat[es] to Congress and the states [] shared responsibility for the legitimation of electoral outcomes”). Therefore, New Columbia has the authority to regulate its elections and preclude Petitioner from the ballot if he does not meet the constitutional minimum. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997) (holding that states have a strong interest in the stability of their political systems and the Constitution permits them to enact reasonable election regulations).

While Congress has a similar interest in ensuring that its members meet the constitutional requirements, the Framers explicitly set forth a procedure under Article I, Section 5 as a means of

advancing this interest. *See generally Barry v. U.S. ex rel. Cunningham*, 279 U.S. 597, 615 (1929) (recognizing that Congress must exercise its constitutional power to exclude a member after he was officially elected). Similarly, States undoubtedly have a stake in ensuring that their interests and the interests of their citizens are represented by qualified congressional candidates.

Here, the State of New Columbia has a legitimate interest in adjudicating the challenge against Petitioner; after all, the states were the ratifying authorities that put into effect the Insurrection Clause. U.S. Const. amend. XIV, § 3. It would be senseless if they were powerless to enforce it. Furthermore, not allowing the voters of New Columbia to challenge the candidacy of Petitioner would frustrate foundational principles of comity and federalism. *See generally Younger v. Harris*, 401 U.S. 37, 44 (1971) (describing “Our Federalism” as a “system in which there is sensitivity to the legitimate interests of both State and National Governments”).

Considering fundamental state interests and our dual system of government, this Court should uphold the constitutionality of the New Columbia Challenge Statute.

C. Prohibiting the states from regulating the qualifications of their candidates under Art. I, Section 5 of the Constitution will upset the balance of power between the states and the federal government.

1. To protect the states’ interest in federal elections, This Court has interpreted the States’ power to regulate elections broadly.

This Court has never recognized an exclusive power of Congress to regulate the qualifications of Congressional candidates. It has, however, recognized that the States have broad power to set requirements “as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.” *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

The State of New Columbia has a duty to preclude unqualified candidates from the ballot. *See Storer v. Brown*, 415 U.S. 724 (1974) (acknowledging “a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies”). This Court has implicitly recognized that preventing candidates who cannot hold the office they are seeking is a legitimate exercise of state power. *See Bullock v. Carter*, 405 U.S. 134 (1972) (holding that states have legitimate interests in regulating the number of candidates on the ballot to prevent clogging of the election machinery, avoid voter confusion, and assure that winner is choice of the majority). This authority no doubt extends to Petitioner, if indeed the serious allegations made against him have any merit.

Further, the Elections Clause states that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4, cl. 1. The Supreme Court has emphasized the sheer “breadth” of this grant of power, explaining that such “comprehensive words” provide a “complete code for congressional elections.” *Roudebush v. Hartke* 405 U.S. 15, 24 (1972) (holding that recount of votes in the election for U.S. Senator is an integral part of Indiana electoral process); *see Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) (acknowledging that Elections Clause imposes the duty to prescribe time, place, and manner of electing Representatives and Senators, but confers power to alter those regulations to Congress).

State governments are at least as capable as Congress to determine the age, citizenship, and residency status of congressional *candidates* — if not more so. Moreover, there is no precedent prohibiting the states from adjudicating the qualifications of candidates under Article 1, Section 5, Clause 1. In this case, Petitioner has pointed to no authority holding that New Columbia is barred

from evaluating whether a candidate meets the constitutional requirements of office or enforcing such requirements. *Oshaghnessy v. Morgenthal*, No. 22-sy-0428933 (D.D.N.C. June 15, 2022). The Challenge Statute is constitutional because New Columbia has the authority to protect its elections and exclude unqualified candidates under the Constitution from the ballot.

2. Lower Courts have recognized state’s interest in precluding unqualified candidates under Article I

The States’ authority to protect their elections from constitutionally unqualified candidates is a well-established principle among the lower courts. The 13th Circuit’s reliance on *Lindsey* and *Hassan* is proper because these cases demonstrate the extent to which the States may enforce constitutional qualifications for candidates running within their jurisdiction. *Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014); *Hassan v. Colorado*, 495 Fed. Appx. 947 (10th Cir. 2012). Although both cases concern presidential elections, they nonetheless articulate the importance of recognizing States’ interests in protecting elections, doing so in conformity with the previous holdings of this Court.²

In *Lindsay*, the court emphasized that states have an interest, if not a duty, to protect the integrity of their political processes from frivolous or fraudulent candidacies. 750 F.3d 1061 (9th Cir. 2014). Peta Lindsay, 27, sought a place on the 2012 presidential primary ballot for the Peace and Freedom Party. *Id.* at 1063. She properly filed her nomination papers and was generally recognized as a candidate for that party. *Id.* The Secretary of State unilaterally excluded her from

² The *Greene* court found the holdings in the presidential cases persuasive and held that the Article 1, Section 5, Clause 1 applies to “its own members,” not candidates, and recognized that deciding otherwise would leave a state defenseless to protect its ballot. *See* 2022 WL 1136729, at 26-28.

the ballot because “Lindsay wasn’t constitutionally eligible to be president.” *Id.* (emphasis deleted); U.S. Const. art. II, § 1, cl. 5.

In *Hassan*, the plaintiff, who was a naturalized citizen, charged that the State barring him from ballot access was unconstitutional. 495 Fed. Appx. at 1. Then-judge Gorsuch rejected that argument, holding that the State had a legitimate interest in excluding Hassan from the ballot and properly exercised its power to do so because he was constitutionally ineligible to assume the office he desired. *Id.*; U.S. Const. art. II, § 1, cl. 5.

In conclusion, our Constitution gives States a say in regulating the candidates who seek to represent their interests and the interests of their citizens. In recognition of this, the Court should uphold the constitutionality of the Challenge Statute.

Applicant Details

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Applicant Education

BA/BS From	American University
Date of BA/BS	May 2019
JD/LLB From	American University, Washington College of Law
	http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010
Date of JD/LLB	May 18, 2024
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	American University Law Review
Moot Court Experience	No

Bar Admission

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

June 02, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising fourth year part-time law student at American University Washington College of Law and write to express my strong interest in joining your chambers in the 2024-2025 term as your law clerk. I would be honored to learn from such a committed public servant, and I am confident you would find my professional and academic qualifications to be an asset in your chambers.

As a first-generation college student, I have had the privilege of receiving my college degree and legal education in Washington, D.C. and hope to remain in in the D.C., Maryland, or Virginia area as I begin my career practicing in civil rights litigation. While attending my law school courses in the evenings, I worked full-time in a demanding litigation position at an employment law firm, where my experience working on and sitting at counsel table during an eight-day trial solidified my aspirations to serve as a judicial law clerk. In addition to my full-time employment, I served as a Teaching Assistant for two professors in Contracts, Torts, and Administrative Law; gained significant research and writing experience as a Research Assistant for two professors; published an article at the Northern Ohio University Law Review; and accepted a leadership role on the American University Law Review.

I am an inquisitive learner who has developed interests in nearly every facet of the law. However, the most gratifying experience of my legal education was researching and writing an article regarding the scope of anti-retaliation protections for whistleblowers. This experience showed me how much I enjoy having the opportunity to research and write about novel and difficult legal issues, and this fascination, combined with my future litigation aspirations, inspired me to pursue this opportunity in your chambers.

Enclosed please find my resume, references, law school transcript, and writing sample for your review. Professor Andrew Popper, Professor Stephen Wermiel, and R. Scott Oswald are providing letters of recommendation in support of my application. I am happy to provide additional recommendations as requested. Thank you for your consideration.

Respectfully,
Katelyn Deibler